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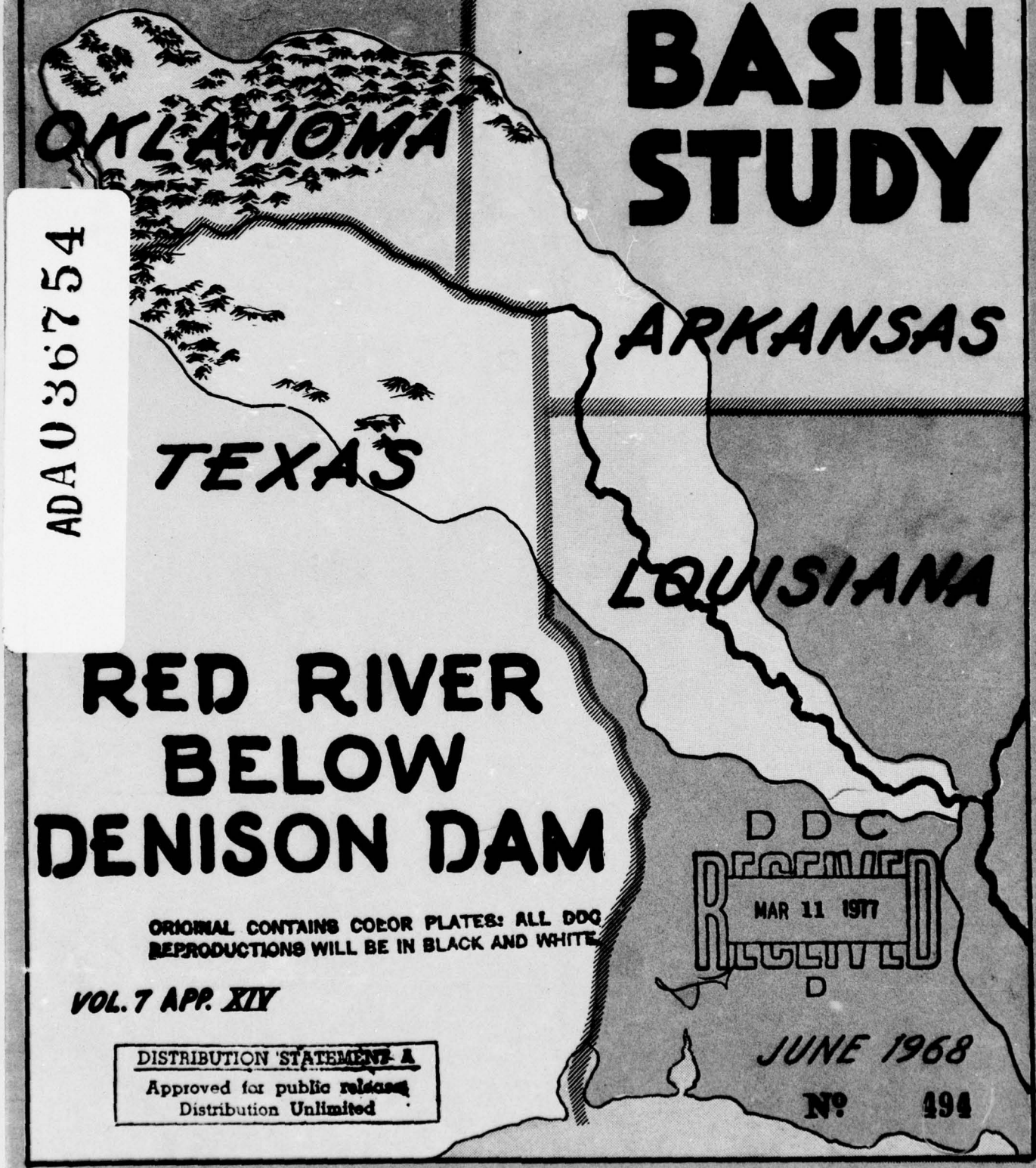
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1 OF 4
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# COMPREHENSIVE BASIN STUDY




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# RED RIVER BELOW DENISON DAM

ORIGINAL CONTAINS COLOR PLATES: ALL DDC REPRODUCTIONS WILL BE IN BLACK AND WHITE

VOL. 7 APP. XIV

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COMPREHENSIVE BASIN STUDY

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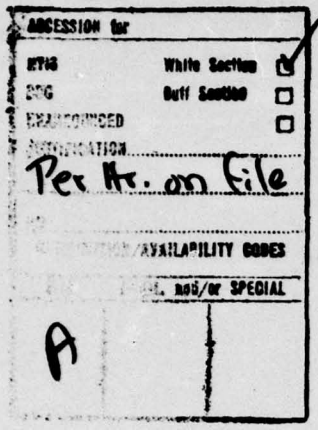

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(6) Comprehensive Basin Study.

RED RIVER BELOW DENISON DAM
ARKANSAS, LOUISIANA, OKLAHOMA, AND TEXAS
~~COMPREHENSIVE BASIN STUDY~~

Volume 7.

Appendix XIV.




(11) June 68

(12) 307 p.

APPENDIX XIV

STATE WATER LAWS, POLICIES, AND PROGRAMS

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# PREFACE

The increased emphasis upon comprehensive and coordinated planning indicates a need for a better and more complete understanding of the role of the State in the development and management of water and related land resources. This role depends largely on the laws, policies, and programs of the State. The purpose of this appendix is to identify and catalog those State laws, policies, and programs relating to water use and control in order to define the nature and extent of participation by the States in the development of the water and land resources of the basin.

# APPENDIX XIV

## STATE WATER LAWS, POLICIES, AND PROGRAMS

PART 1 - ARKANSAS

PART 2 - LOUISIANA

PART 3 - OKLAHOMA

PART 4 - TEXAS

COMPREHENSIVE BASIN STUDY

RED RIVER BELOW DENISON DAM

# A R K A N S A S

STATE LAWS, POLICY AND PROGRAMS

pertaining to

WATER & RELATED LAND RESOURCES

Prepared By:

ARKANSAS SOIL AND WATER

CONSERVATION COMMISSION

MARCH 1968

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# I. INTRODUCTION

Fortunately, Arkansas' rivers and streams and ground water aquifers have provided sufficient water for the state's basic needs during the past, with only occasional problems related to shortage. For the most part, the state has been blessed with an abundance of water.

During the development of the state, problems of water shortage have played a minor role; and as a result, the state has not had to cope with the water problems common to the more western states. However, as the demands for water continue to increase, a new look must be taken of the whole water picture. Serious water problems are expected to rise in the future, particularly during periods of drought.

The state of Arkansas receives, on the average, 48 inches annual precipitation. This, coupled with suitable topography for surface reservoirs in at least half of the state, should allow for development of sufficient water to satisfy the state's future needs even during periods of prolonged drought. This, of course, will require proper management of the water resources. Some attention will have to be given to substituting surplus surface water for ground water where ground water is in short supply. Some inter-basin transfers of water will undoubtedly be required.

This report describes the current situation in Arkansas water development from the legal and physical aspects and should serve as a foundation to provide solutions to problems which will arise in the years ahead.

## A. Current Problems

In view of anticipated water management problems confronting the state, the Soil and Water Conservation Commission was charged with the responsibility of preparing a state water plan. Accordingly, the Commission is presently engaged in reviewing the state's present water developments and in analyzing the basic water data collection program in order to provide a sound basis for future development, management, and utilization of its water resources. In determining the optimum use of water resources, it is necessary to understand the current situation and the events of the past leading to the present.

Although the uneven distribution of precipitation throughout the year has often resulted in periods of water shortage, the basic water problem, for the most part, has been concerned with excess waters. This was attacked by construction of surface water impoundments, the building of levees, drains, and small watershed retention structures.

These projects were designed primarily to reduce and regulate the peak flows and to provide drainage of wetlands. The water stored in large reservoirs were dedicated to flood storage and later used for power generation. Thus, in the past, flood control, power, recreation and drainage has been the dominating theme in watershed development in Arkansas.

Although extensive development has been accomplished in the way of flood control, hydro-electric power, drainage, and recreation facilities, largely by federal agencies, there is urgent need for a comprehensive and coordinating study of both existing and future developments which involve conservation storage. Only small quantities of water have been developed in surface reservoirs for municipal, agricultural, industrial , and individual use. Facilities to store surface water for irrigation of crops have been provided primarily by individual initiative.

Many industrial and most irrigation supplies have been derived from ground water sources; however, the amount of water that can be developed from Arkansas' ground water reservoirs is limited. These limits have not yet been clearly determined but will be related in the final analysis to the amount of recharge to the ground water reservoirs and to the degree of ground water depletion allowed. At some point in the future, if it has not already occurred, some of these ground water reservoirs will be developed to the extent that they will experience continuing water-level declines. The only solution will be to develop alternate sources of surface water to supplement the ground water. Obviously, this will require that the surplus surface water of the State be stored during periods of high run-off and retained for use during periods of drought.

Municipal and industrial water supply needs are constantly expanding and the demand for irrigation water resulting from more intensive farming practices will likewise increase.

## B. Current Plan

This report includes an organizational chart, effective July 1, 1967. Efforts extended toward the formulation of a state water plan should not be without consideration of these authorities.

Based on preliminary considerations it would appear that the multi-purpose basin development approach will be used in order to provide water supplies for the state's needs.

In order to provide the basic framework from which a state water plan can be drawn, it will be necessary to consider such factors as the collections, compilation, and analysis of data pertaining to climate, soil, and water as related to the usage and availability

of water in the State of Arkansas; work out the details of the state water plan in close cooperation with other related local, state and federal agencies; study the laws of Arkansas, other states, and the federal government as they relate to overall water matters for the purpose of determining the necessity for new or amendatory legislation; and to make recommendations to the Governor, the legislature, and other state agencies concerning new or amendatory legislation and desirable procedures for coordinating the various water activities which effect the overall development of the water resources of the state.

In the formulation of the state water plan, there must be adequate basic data. The first effort must be directed toward an inventory of the existing data. This inventory and analysis of the existing data pertaining to water resources developments and to water needs is necessary to avoid duplication of effort, determine areas of conflict and interest, and define areas of need not covered by existing plans.

It is the Commission's intention to look at the state from a river basin approach, dividing the state into five major river basins; namely, White, Arkansas, Red, St. Francis, and Ouachita. Further possible divisions may be made within the major river basins.

Within each basin the Commission will attempt to fix within reasonable limits the magnitude of present and foreseeable future water requirements; the adequacy of present water supply; and the potential future water supply that might be developed; the location, nature, and scope of water control problems, and preliminary considerations of the physical and legal actions necessary to fulfill the unsatisfied needs. New emphasis must be given to the inclusion of conservation storage in reservoirs to provide for irrigation needs, particularly during the periods of low stream flow. The Commission will utilize all the possible available data and resources of associated agencies but the Commission's efforts will be devoted primarily to coordination, analysis, and interpretation of the composite information for each area. Analysis of this kind will serve as a sound basis for consideration of needed new or amendatory legislation, additional basic data and research programs, problems of state administration of water laws, more detailed planning needs and objectives, and the physical developments required.

In general, Arkansas has almost no statutory law concerning individual water rights, Perhaps this is fortunate, because it is not bound to a system of rigid water law doctrine which could interfere with the full development of the state's water resources. In addition, the state can learn from the experiences of other states which have already legislated systems of water law. We believe that a minimum of restrictions should be adopted. It is a physical fact that sufficient water exists in the state to satisfy the needs of the people, and the law must allow optimum development.

It is already recognized (1) that some system of water use registration must be adopted in order for the Commission to keep abreast of the pace of water development and (2) the state must in time be allowed to participate more extensively in the construction phase of water development projects.

Necessarily, an understanding of existing Arkansas water law must preface any new legal doctrine. Accordingly, the remainder of this paper reviews the existing laws effecting the water resources of the state.

## II. STATE LAW

### A. Principles and Concepts

#### 1. State Constitution

There are no provisions of the State Constitution setting forth directly the public policy pertaining to water and land resources. There are provisions, however, which are related to water and land resources.

> Art. II § 23. Eminent domain and taxation--The State's ancient right of eminent domain and taxation is herein fully and expressly conceded; ....
>
> Amendment No. 35. Wild Life, Conservation--Fish and Game Commission.

This Amendment creates the Game and Fish Commission whose purpose is to control, manage, restore, conserve and regulate birds, fish, game, and wildlife resources of the State.

Although the State Constitution is practically silent on the subject matter of this memorandum, the State's judiciary has wisely never questioned or challenged the State's inherent police power to do those things which are necessary and desirable to protect public health and welfare and in preserving the State's water and related land resources.

Should a new constitution be adopted, it is recommended that a clause be included stating the State's broad general public policy on water and related land resources.

#### 2. Statutes

Provisions which deal directly and indirectly with water and related land resources are scattered throughout the Arkansas Statutes. Although Title 21 is designated WATER -- DRAINAGE AND LEVEE DISTRICTS, it by no means contains a compilation of the many statutes pertaining to water and related subjects. The underlying purpose behind most of the many legislative enactments has been to bring about a great beneficial utilization of the surface waters, to harness or control the streams of the State so as to lessen the damage during times of flooding, to make possible a more productive use of lands which are adjacent to watercourses and streams of the state, to insure an

adequate water supply for municipalities, industry, agriculture and commerce upon State streams, to protect the public health, welfare and scenic beauty of the State.

Arkansas has been quick to enact needed legislation in order to accomplish these underlying principles. However, it is evident that future legislation in this area must be guided by one State agency, namely, the Arkansas Soil and Water Conservation Commission, in order that more cooperation in the planning and execution of programs designed to implement these many varied interests might be had. It is also of interest to note that this spirit which led to the enactment of needed legislation has not led to proper enforcement and augmentation of this legislation. The worst criticism which can be made of the State's legislation in this area is that there has been no central agency charged with the responsibility of developing and enforcing a well-planned, coordinated program.

### 3. Case Law

The underlying theme of the most significant decisions of the Arkansas Supreme Court which have dealt with the subject matter of this memorandum, namely water and related land resources, has been that the affected parties in interest (who will be dealt with more exhaustively later in this memorandum) have the right to reasonable use of the water in the streams of the State, the underground water supply and the right to have the water resources of the State in a reasonably unpolluted condition provided that such reasonable use does not unduly interfere with another lawful user's right to the same. No attempt is made to deal extensively with the cases at this juncture of this memorandum; however, this philosophy of reasonable use of available water resources is vividly exemplified by the cases of

a. Harris v. Brooks, 225 Ark. 436, 283 S.W. 2d 129 (1955);

b. Jones v. Oz-Ark-Val Poultry Co., 228 Ark. 76, 306 S.W. 2d 111 (1957); and

c. City of Springdale v. Weathers, _____ Ark. _____, 410 S.W. 2d 754 (1967).

Suffice it to say that the most significant cases from the Arkansas Supreme Court, whether they dealt with riparian rights, underground water, pollution, or conflicts between users, have consistently said that all lawful and potential users have the right to the reasonable use of water resources in a reasonably unpolluted condition.

## 4. Attorney General's Opinions

The following are abstracts of the more significant opinions rendered by the Attorney General on the subject of water and related subjects:

June 16, 1953

QUESTION: Whether a Soil Conservation District has authority to develop and sell a bond issue for capital to finance the purchase of 1500 to 2000 acres of timber land for forming a demonstrational area of which all practices of conservation forestry can be applied and maintained over a long period of time.

ANSWER: "... the district can sell revenue bonds pledging as their security the land purchased and income therefrom, so long as the faith and credit of the State is not pledged provided the district has adequate Legislative authority.

"If it has such authority, it would necessarily be found in paragraph three of § 9-909....

"It is my opinion that the fair implication derived from this language would not prohibit the board from issuing such bonds...."

March 3, 1958

QUESTION: "1. Does Arkansas Law establish the right for public bodies other than State agencies or institutions to construct, maintain and operate the sewerage facilities in other public right-of-ways?

"2. May State highway right-of-ways be used by other public bodies for purposes of laying sewer lines when such sewer lines do not interfere with general use of the highway?

"3. Are municipalities, sewer improvement districts and counties public bodies under Arkansas Law?

"4. Do the terms 'Public-Right-of-Way' and 'Public Easement' have the same meaning under Arkansas law?

"If not, what is the difference in meaning?"

ANSWER: "1. ...In view of the foregoing, I am of the opinion that sewage facilities may be created under public authority beneath public right-of-ways of public easements either by grant from the public body holding title or by condemnation or eminent domain proceedings. However, if condemnation or eminent domain proceedings are instituted, they should not permanently injure the ordinary use of the public property unless specific statutory authority is obtained. Stated in a different manner, if the sewerage facilities do not injure or obstruct the general use of the right-of-way or easement, condemnation or eminent domain proceedings may be instituted against the property under the condemning agency's implied authority. Whether

or not such an injury would result is, of course, a question of fact rather than one of law.

"2. Yes. Ark. Stat. Ann. § 76-544 ....

"3. Yes.

"4. Although 'public right-of-way' and 'public easement' have different meanings, they need not be distinguished for purposes of condemnation or eminent domain since the law is applicable to each in like manner."

March 24, 1959

QUESTION: "The Arkansas State Game and Fish Commission has applied to this Commission for a permit to construct a dam on White Oak Creek in Ouachita County to impound water, the water impounded to be controlled by it for the purpose of the restoration and conservation of fish.

"The Water Conservation Commission has approved the issuance of a permit; but the Game and Fish Commission refuses to pay the fee which the Water Conservation Commission under the provisions of Section 14 of Act 81 of 1957 is required to collect for the issuance and maintaining in effect the permit issued.

"The Water Conservation Commission would like to have an opinion from the Attorney General as to whether (1) the Arkansas Game and Fish Commission is exempt from paying this fee, (2) This Commission has authority to issue a permit for the construction of a dam without collecting the fee."

ANSWER: "Agencies of the State are subject to the provisions of the Water Conservation Act under Ark. Stat. Ann. § 21-1302 (a) where a dam is constructed for one of the purposes set out in the last statute quoted above. However, I am of the opinion that the dam in question was not constructed for one of the purposes designated in that statute and therefore, the fee prescribed in Ark. Stat. Ann. § 21-1314 is not applicable."

December 14, 1959

QUESTION: "Prior to 1957 a dam was constructed on a certain stream in Arkansas for the purpose of conserving water for irrigation and recreation. This dam was built on the property of a certain individual. In 1958 said dam was destroyed by the builders and in 1959 another dam was constructed by the same people but on another person's property some distance up stream.

"The question is this, must the construction of this new dam in 1959 be done under the provisions of Act 81 of the Acts of Arkansas of 1957?"

ANSWER: "Generally speaking, I am of the opinion that any dam constructed on or after the effective date of Act 81 would be governed by this Act; ...."

February 2, 1950

QUESTION: "...whether or not Bayou Bartholomew is a navigable stream."

ANSWER: "I am authorized by law to render official opinions only to certain designated State officials and agencies; however, for your information, I find no Arkansas statute declaring Bayou Bartholomew to be a navigable stream. As you know, however, the navigability of a stream is a question of fact and it is not necessary that it be so declared by any statute of the State or United States but may be proved by parol evidence...."

October 23, 1962

QUESTION: "Is the land West and North of the creek now in Faulkner County by reason of the shift in the location of Palarm Creek, a non-navigable stream?"

ANSWER: "There are no Arkansas cases which are squarely in point. Consequently, the answer to your question is found in the general law in 20 C. J. S. Counties, Section 15. The general law is stated in the following language:

> 'A legislative act fixing the boundaries between two counties as the middle of a stream or the channel thereof must be construed to refer to the stream or channel as it is existing at the date of the passage of the act and not as it existed at some prior time.
>
> 'An artificial or sudden change, as by avulsion, in the course of a stream forming the boundary between counties, which causes a new channel, does not operate to change the legal boundary between the counties; but the rule is otherwise as to a natural change, as by accretion, which is gradual and imperceptible. The closing of the main branch of a river, constituting a county boundary line, by either artificial or natural means, whether as a result of accretion or avulsion, does not result in shifting the boundary.'

"Therefore, it is my opinion that the boundary between Pulaski and Faulkner Counties would be Palarm Creek, as it existed at the date of the passage of Act 59, Ark. Acts of 1875."

May 31, 1963

QUESTION: "...if the Soil and Water Conservation Commission is the successor to the Geological and Conservation Commission as an agency member on the Water Pollution Control Commission."

ANSWER: "The Legislative enactment which created the Water Pollution Control Commission codified as Ark. Stats. § 47-803, et. seq., provides in part at § 47-803:

> 'There is hereby created and established within the State Board of Health, a Water Pollution Control Commission composed of eight (8) members; one representative of each of the following State agencies, to be designated by such agencies: State Board of Health, Game and Fish Commission, Oil and Gas Commission, Resources and Development Commission, and State Forestry and Parks Commission, and (3) members to be appointed by the Governor, by and with the consent and approval of the Senate, representing industry, municipalities, and agriculture and livestock interest in the State....'

"In 1955, the Resources and Development Commission was abolished by Act 208 of 1955 (Ark. Stats. § 19-111, et. seq.) and its duties were transferred to the Geological and Conservation Commission. Therefore, to properly comprehend and resolve the question, it is necessary to compare that enactment with Acts 14, 15 and 16 of 1963.

"A careful study reveals that the duties and responsibilities charged the Soil and Water Conservation Commission as noted in Act 14 of 1963 are in concert with Act 408 of 1955 and Water Pollution Control Commission. Thus, it is my opinion that the intent of the legislature was that the Soil and Water Conservation Commission succeeded the Geological and Conservation Commission as an agency member of the Water Pollution Control Commission."

September 26, 1966

QUESTION: "You state in your letter that your District recently constructed a building which is currently being leased to the Soil Conservation Service and the Agricultural Stabilization Conservation Service.

"You further state:

> 'Since the Soil and Water Conservation District is a political subdivision of this State it is apparent to us that such districts should not be required to pay real estate taxes on property of this kind.'"

ANSWER: "Ark. Stat. Ann. § 9-901 et. seq. (Supp. 1965), provides among other things, that 'Soil conservation districts' or 'soil and water

conservation districts' means a governmental subdivision of this State. Therefore, we concur in your statement to the effect that your District is a political subdivision of this State.

"Ark. Stat. Ann. § 84-206 (Repl. 1960) sets out property exempt from taxation in this State, and included is 'All property whether real or personal belonging exclusively to this State or the United States.'

"It is our opinion, therefore, that the property concerned in your letter is not subject to taxation under the laws of this State."

## B. Water Rights

### 1. Surface Water Doctrine

There are two theories of water rights. The first of these is prior appropriation followed in most western or arid states under which the water resources are appropriated to the users. Most "humid" states adhere to the second theory, that of riparian rights. Under riparian rights there are two doctrines: (1) the doctrine of reasonable use, and (2) the doctrine of natural flow.

The decisions of Harris v. Brooks, 225 Ark. 436, 283 S.W. 2d 129 (1955), and Scott v. Slaughter, 237 Ark. 394, 373 S.W. 2d 577 (1963) commit Arkansas to the reasonable use theory of riparian rights. 19 Ark. L. Rev. 193. An earlier case, Harrell v. City of Conway 224 Ark. 100, 271 S.W. 2d 924 (1954), was decided on both the doctrines of reasonable use and natural flow. The Arkansas Supreme Court stated that where there is a conflict of theories, the theory of reasonable use would be followed. In at least one instance there is a statutory provision to "allocate water" Ark. Stat. Ann. § 21-1308.

The right to use water for strictly domestic purposes such as household uses is superior to other uses of water such as fishing, recreational, commercial and irrigational purposes. Other than the superiority of domestic purposes all other lawful uses of water are equal. When one lawful use of water is destroyed by another lawful use, the latter must yield or it may be enjoined, or equitable adjustment may be made.

Riparian owners along non-navigable streams take title to the center of the stream ratably with other riparian owners, the extent of the interest depending on the frontage on the stream. Harrison v. Fite, 148 F. 781 (1906); Barboro v. Boyle, 178 S. W. 378, 119 Ark. 377 (1915); Lutesville Sand & Gravel Co. v. McLaughlin, 26 S.W. 2d 892, 181 Ark. 574 (1930); Goforth v. Wilson, 184 S.W. 2d 814, 208 Ark. 35 (1949).

Accretions, being the addition of soil by gradual deposits due to natural causes, belong to the owner of the riparian land to which they are added and pass by conveyance describing the land without being further described or mentioned. Harrison v. Fite, supra.

Relictions, being land formed by the gradual retreat of a stream or river, are treated similarly.

When a stream shifts suddenly, that is, by avulsion, boundaries of riparian owners' lands do not change with the course of the stream. Goforth v. Wilson, supra. There is one main distinction between accretion and avulsion. If the change in the course of the stream cannot be perceived while the progress is going on, the change is accretion. If the change can be perceived while the progress is going on, it is avulsion. Goforth v. Wilson, supra; Banks v. Chicago Mill & Lumber C., 92 F. Supp. 232 (1950).

The ultimate test seems to be whether the new formation can be traced to the land of its origin or identified as a part thereof. Worsham, Real Property - Riparian Rights - Accretion, Reliction, and Avulsion, 6 Ark. L. Rev. 68.

A riparian owner upon a navigable stream deriving title from the United States takes only to the high water mark and not to the middle of the stream, the title to the bed of the stream being in the State. St. Louis I.M. & S.R. Co. v. Ramsey, 53 Ark. 314, 13 S.W. 931 (1890). Islands forming in the bed of a navigable river belong to the State unless such islands are formed within the original boundaries of a former owner of land upon such stream. In this case, the title to the island formed vests in the former owner, his heirs or assigns or in whoever shall have lawfully succeeded to the right of such former owner therein. Anderson-Tully Co. v. Murphree, 175 F. 2d 735 (1949); Ark. Stat. Ann. §§ 10-202 - 10-601.

Whether a stream is navigable is a question of fact. To meet the test of navigability a water course must have a useful capacity as a public highway of transportation. A theoretical or potential navigability, or one that is temporary, precarious or unprofitable, is not sufficient to impress upon it a public servitude. Harrison v. Fite, supra; Little Rock M.R. & T.R. Co. v. Brooks, 39 Ark. 403 (1882); St. Louis I.M. & S.R. Co. v. Ramsey, supra; Barboro v. Boyle, supra; McGahhey v. McCollum, 179 S.W. 2d 661, 207 Ark. 180 (1944); Parker v. Moore, 262 S.W. 2d 891, 222 Ark. 811 (1954); Five Lakes Outing Club v. Horseshoe Lake Protective Association, 288 S.W. 2d 942, 226 Ark. 136 (1956).

Generally, any watercourse is navigable if it has been so declared by the Federal Government or is navigable in fact. The Cache River has been specifically declared non-navigable. Ark. Stat. § 21-101. This is an approval by the General Assembly of a Congressional declaration whereby Congress declared the Cache River to be non-navigable.

The title to lands formed in non-navigable lakes or abandoned river channels on beds vests in the riparian owners to such lands. Ark. Stat. Ann. § 10-204. Riparian shore owners take to the thread of non-navigable lakes in the same fashion as riparian owners bordering along non-navigable streams. The lakeshore owners share the lake bed to the center in triangular segments or gores. McGahhey v. McCollum, supra.

## 2. Ground Water Doctrine

The leading Arkansas case on the use of ground water is Jones v. Oz.-Ark.-Val. Poultry Co., Supra. Oz.-Ark-Val Poultry Company used water from seven nearby wells to process 12,000 chickens per day. Whenever those wells were pumping the domestic wells of appellants would go dry. When the wells were turned off, appellants' wells again produced water. The Court held that the wells supplying the processing plant interfered with the domestic wells and that the interference was unreasonable and injunction would lie to prevent excessive pumping.

This case applies the "reasonable use doctrine" to ground water where there is conflict of uses. Appellants' uses being for domestic purposes were superior to appellee's commercial uses. The Court extended the rule of Harris v. Brooks to subterranean percolating waters. The Court said that where two or more persons own tracts of land with a common underground reservoir, each person has a common and correlative right to the use of the water on his land to the full extent of his needs if the common supply is sufficient, but if the supply is scant and one use interferes with another use, each person is limited to a reasonable share.

In making this decision the Arkansas Supreme Court adopted the definitions of subterranean waters, percolating waters and underground streams from 93 C.J.S. Waters § 86-87 (1956) where it states:

> "In legal consideration, subterranean waters are divided into two classes, namely, percolating waters and underground streams. Flowing subterranean waters consist of waters whose courses are well defined and reasonably ascertainable and whose existence is not of a temporary or ephemeral character. 'Percolate,' in this connection, is a term which may designate any flowage or subsurface water, other than that of a running stream, open, visible, and clearly to be traced. The term 'percolating waters' includes all waters which pass through the ground beneath the surface of the earth without a definite channel and not shown to be supplied by a definite flowing stream; percolating waters are those which seep, ooze, filter, and otherwise circulate through the sub-surface strata without definite, or defined, channels, or in a course that is unknown and not discoverable from surface indications without excavation for that purpose. Percolating waters may be either rain waters which are slowly infiltrating through the soil or they may be waters

seeping through the banks or bed of a stream which have so far left the bed and other waters as to have lost their character as part of its flow."

### 3. Access to Lakes and Streams - Federal

The general policy of the Federal Government is that the shoreline and water areas of reservoirs, such as Beaver, Blue Mountain, Bull Shoals, Greers Ferry, Nimrod, Norfolk, Table Rock and Dardanelle shall be open to public use as set forth in 16 U.S.C.A. § 406 d. Rules and Regulations for access to reservoir areas are prescribed by the Secretary of the Army in 36 C.F.R. § 311. Regulation 311.9 entitled "Access to Water Area" provides:

(a) Pedestrian access is permitted along the shores of the reservoir except in areas designated by the District Engineer or his authorized representative.

(b) Automobile access is permitted only over open public and reservoir roads.

(c) Access for the general public to launch boats is permitted only at the public launching sites designated by the District Engineer.

The Federal Government obtained only the necessary fee interests for the damsites, work areas and public use areas for the navigation pools along the Arkansas River. Therefore, access to these navigation pools is across privately owned property except at public use areas.

### 4. Access to Lakes and Streams - Private

The only Arkansas case dealing squarely with the problem of access to lakes and streams is Anderson v. Reames, 204 Ark. 216, 161 S.W. 2d 957 (1942).

A brief statement of the facts is presented in order to follow the Court's reasoning.

Reames operated a commercial boat dock and fishing camp on Grand Mere Lake, a navigable body of water and a part of the Ouachita River. The camp was on and in front of the lake shore. Anderson had leased the land including the shore in question from the Crossett Lumber Company, the riparian owner. Anderson erected a fence along the shore line in an attempt to prevent Reames from beaching his boats on the shore and otherwise using the shore. Reames sued to enjoin the enclosure

of the shore and the interference with the use and occupancy of the camp. Anderson cross-complained for the removal of plaintiff's booth, boat dock and houseboat from the shore.

The Court ordered the plaintiffs to remove their refreshment booth and rental boats from the shore as well as the platforms leading from the minnow dock and houseboat to the shore. Defendants were ordered to remove their fence. Plaintiffs were allowed to keep the houseboat and minnow dock anchored in the lake as it was without touching the shore.

Plaintiff's right of anchorage stems from the right of navigation, said the Court. The rights of the riparian owners upon navigable streams includes the right to the uninterrupted and free ingress and egress to the property along its water's edge between the high and low water marks. This right is superior to the rights of the public. The riparian rights are not such as to allow the riparian owner to interfere with the rights of the public. The public has the right to use the shore or beach in front of the property from the high water mark to the water's edge for the purpose of bathing, hunting, fishing and the landing of boats so long as such purposes do not unreasonably interfere with the riparian owner's right of ingress and egress.

The public may have acquired a right-of-way over private land for the purpose of access to lakes and streams by the doctrine of dedication. All that is required is an intent on the part of the landowner to appropriate the land for a public use and an acceptance by the public. It becomes a fact question whether the landowner intended a dedication or a temporary revocable license.

Access may be obtained by a public easement by prescription. If so, the public must have made use of the access adversely, openly, continuously and notoriously for seven years or longer.

A person owning a non-navigable inland lake may exclude others from entry upon his property. Arkansas Game and Fish Commission v. Storthz, 181 Ark. 1089, 29 S.W. 2d 294 (1930), held that where a person owned a lake and the surrounding land, and the fish in the lake were without means to migrate, such person owned the fish and fishing rights subject only to the right of the State to regulate and preserve the fish. If a landowner owns a lake, he may exclude the public or allow them access at his will. McGahhey v. McCollum, supra, held that the owners of the entire body of land surrounding a non-navigable lake may exclude from the lake any member of the public whom they desire to exclude from it, by enclosing the land on which the lake is situated within a fence or any other peaceful manner.

Navigable rivers within a territory occupied by public land shall remain and be deemed public highways. 43 U.S.C.A. § 931 (1964).

The purpose of this statute was to leave the administration and disposition of the sovereign rights in navigable waters and the soil under them to the control of the states respectively. Arkansas has expressed its policy in Anderson v. Reames, supra, by declaring the public has the right of access to navigable waters and the right to enjoy them.

## 5. Diversion Between Basins

There are few Arkansas cases on diversion of water. These cases are for damages from diversion of water from its natural flow and drainage. The cases hold generally that the defendant who diverts water is liable for such damages ensuing from the construction of ditches or obstruction of natural drainage. St. Louis Southwestern R. Co. v. Morris, 76 Ark. 542, 89 S.W. 846 (1905); St. Louis I.M. & S.R. Co. v. Magness, 93 Ark. 46, 123 S.W. 786 (1909); Missouri Pacific R. Co. v. Williams, 212 Ark. 788, 208 S.W. 2d 187 (1948).

As to diversion to out-of-state uses, the United States Supreme Court has sought an answer. In McCarte v. Hudson County Water Co., 65 Atl. 489 (1906), pursuant to a New Jersey statute forbidding the transport of water out of state, the attorney general of that state enjoined the removal of water by defendant water company to the State of New York. The injunction and the New Jersey statute was upheld in the United States Supreme Court on grounds that a state has the power to insist that its natural advantages shall remain unimpaired by its citizens and that the state finds itself in possession of a great public good, and what it has it may keep and give no one a reason for its will. Hudson County Water Co., v. McCarte, 209 U.S. 349, 52 L. Ed. 828, 28 Sup. Ct. 529 (1908).

In a recent case arising out of Texas, the Supreme Court affirmed a lower court opinion that a Texas statute prohibiting removal of ground water from Texas was violative of the commerce clause. City of Altus v. Carr, 255 F. Supp. 828, affd 17 L. Ed. 2d 34, 87 Sup. Ct. 240 (1966). The facts were that Altus, Oklahoma, had its source of water in Texas and had expended vast sums of money on its ground water supply when the Texas Legislature prohibited withdrawal of underground Texas water for transport outside of the State except by specific authorization by the Texas Legislature.

Therefore, the Hudson case no longer may be relied upon, and any state statute prohibiting the interstate transportation of water would risk being stricken under the commerce clause.

Congress may eventually allocate water from interstate streams. Since the decision in Arizona v. California, 272 U. S. 546, 10 L. Ed. 2d 542, 83 Sup. Ct. 1468 (1963), it is clear that Congress has this power,

provided the stream is navigable. A more desirable approach would be for the states involved to allocate their water resources from interstate streams by agreement. Such an approach would seem less cumbersome than for Congress to attempt equitable apportionment of water even though under Art. 1, § 10, Clause 3 of the United States Constitution, Congress must approve the agreement.

Arkansas has provided for a means of entering into interstate compacts for the purpose of allocating water resources. Ark. Stat. Ann. § 9-127, 9-128.

### 6. Eminent Domain

In Arkansas the ancient right of eminent domain is available to take property for public purposes including the development of water-courses and watershed areas. Eminent domain would be available to either a governmental agency or a private corporation to develop water resources. Whenever property is taken by eminent domain the owner must be compensated for his loss.

## C. Regulatory Authority

### 1. Permits or Approvals Required

#### (a) Drilling or Abandoning Wells

By petition a homeowner or tenant who depends upon an artesian well for water supply may have a nearby unused artesian well sealed when his well water pressure is insufficient to accommodate the existing plumbing facilities of his home. Ark. Stat. Ann. §§ 21-1101 et. seq.

Permits for salt water disposal systems to dispose of brine produced in the production of oil may be had upon applications to the Water Pollution Control Commission and/or the Oil & Gas Commission.

If the underground salt water disposal system is approved, the oil producer is allowed a credit on the cost of the system against the severance tax up to the total amount of the tax. Ark. Stat. Ann. §§ 84-2116 - 84-2117.

No permit is required to abandon a water well, shaft, or opening but a person doing so must securely enclose or cover any such abandoned shaft well or opening. Failure to do so is to be guilty of a misdemeanor and to be liable for a fine of $25 to $100 plus liability for twice the appraised value of any livestock lost as a result of the open well. Ark. Stat. Ann. §§ 41-401 - 41-402.

Natural gas and crude oil wells must be plugged when "dry" or abandoned. Ark. Stat. Ann. § 53-203.

The rules of the Oil & Gas Commission provide that the Commission shall issue a plugging permit and supervise the plugging. If the well to be plugged may safely be used as a fresh water well and such utilization is desired by the landowner, the well need not be filled above the required sealing plug set below the fresh water providing that authority is secured from the landowner and filed with the Commission. (Rule B-11, Oil & Gas Commission Rules).

(b) Impoundments

The Arkansas Soil and Water Conservation Commission has power to issue permits for the construction of dams to impound water on streams and the power to make allocations among persons taking water from streams during periods of shortage. Ark. Stat. Ann. § 21-1304.

Under Ark. Stat. Ann. §§ 35-501 et. seq., a person may erect a dam across a non-navigable watercourse, for the purposes of erecting a mill site if such person is the proprietor of the land at the point of the proposed dam site or the owner of the land in fee simple on one side of the watercourse including part of the bed of such watercourse. The purpose of this chapter is to provide for a type of eminent domain necessary to provide the necessary water power to operate water powered machinery. The person proposing the dam must file a petition setting forth particulars of the dam, machinery, and extent of overflow on the lands of others. A jury of 12 determines the damages due to inundation, the impairment of ordinary navigation and fish passage and whether the health of the community will be endangered. The Court weighs all the factors and at its discretion grants permission to erect the dam. If the petitioner does not own the opposite bank, the court in its decree may vest one acre of land on the opposite bank to the petitioner upon which to abut the dam.

(c) Channel Encroachments

It is unlawful to obstruct the free flow of water in any natural or manmade ditch, stream or canal by dumping timber, trees or other material in the water. Ark. Stat. Ann. § 21-406. This same statute expressly allows the floating of logs and having a boom in any natural stream. Any person removing obstructions of timber, trees or other material from such channels has a cause of action for the cost of the removal against the person causing the obstruction. Ark. Stat. Ann. § 21-407.

In addition to civil liability there is criminal liability for a fine of up to $500 for obstructing drains, streams and canals with timber, trees, or other material. Ark. Stat. Ann. § 21-408.

Any person who obstructs drains and ditches established by drainage districts is guilty of a misdemeanor and subject to a fine of $100 plus civil liability to the drainage district for double the cost of removing the obstruction and repairing the damage. Ark. Stat. Ann. § 21-565.

The channels of navigable watercourses must not be obstructed or blocked in such a way that will be harmful to commerce. On this subject there is a working relationship between the state and federal governments. Under authority of P. L. 89-670 § 6 (g), no bridges may be built across navigable waters of the United States until the plans and specifications have been approved by the Department of Transportation.

The intent and purpose of that Act is to protect navigation as a part of interstate commerce. U. S. v. Ingram, 99 F. Supp. 465, reversed on other grounds, 203 F. 2d 91, cert. denied, 73 Sup. Ct. 1136, 345 U. S. 995 (D. C. Ark. 1951).

The requirements of approval by the Department of Transportation have no application to navigable waters which lie wholly within a single state.

In Hilgar v. Chrisp, 98 Ark. 490, 136 S. W. 660 (1911), The Arkansas Court dealt with the power of the state under the Bridge Act of 1906, supra. Certain citizens sought to enjoin the construction of a bridge across the Little Red River in White County, challenging the State's power under the Federal Bridge Act. The Arkansas Supreme Court affirmed a decree of dismissal and held:

> "The State has complete jurisdiction over all navigable waters situated within its limits subject to the paramount power of Congress to regulate commerce thereon, and the State may provide for the construction of bridges over such navigable rivers, provided they do not obstruct navigation and are not in conflict with Congressional legislation on the subject."

In the Hilgar case the plans and specifications were approved by the War Department, therefore, the Court saw no conflict in the State action and the Federal Bridge Act.

The Federal Power Commission has authority to license private hydro-electric power dams on navigable waters.

## (d) Development in Flood Plains

Construction and maintenance of levees, drainage canals and related flood and drainage control works, has been declared conducive to public welfare and a part of Arkansas' public policy.

For this purpose the United States Government is given authority to exercise the State's power of eminent domain to the extent necessary to construct levee and drainage works. Ark. Stat. Ann. §§ 21-844 - 21-845.

Ark. Stat. Ann. §§ 9-801 et. seq. as amended provides, among other things, that it is the duty of the Arkansas Soil and Water Conservation Commission to formulate a sound public policy of flood prevention, flood control and flood protection. Toward this end the Commission is given the duty of compiling figures on flood damage, rainfall, runoff, flowing channels, stream obstruction, existing facilities for storing surplus waters and existing protection works. The Commission has the power to improve the channels of watercourses, to construct and maintain flood retarding devices and other improvements necessary to control floods. The Commission is authorized to cooperate with Federal agencies and programs directed toward flood control.

The county courts have the power under Ark. Stat. Ann. § 21-601 et. seq. to establish levee districts for areas subject to overflow. A board of directors is elected by landowners and mortgagees of the district. The board determines what work is to be done, contracts with the lowest bidder and assesses the cost as tax to the benefitted lands in the district.

Drainage districts may be established after petition by at least three landowners within the proposed district. Petitions are made to the county court for the establishment of a drainage district or a district to operate in conjunction with the Federal Government to maintain improvements constructed by the Federal Government. The county court appoints three commissioners. The Commissioners assess the benefit to each tract of land as well as the damage to landowners caused by the construction of drainage works, contract for the drainage work and apportion the costs incurred to the benefitted lands as a tax. Ark. Stat. Ann. §§ 21-501 et. seq.

Even though not expressly provided, it is implied by the Arkansas Statutes that cities through their planning authority may conduct flood plain zoning for the protection of its public health, safety, and welfare. Ark. Stat. § 19-2829 (b). The jurisdiction of a city to zone may extend up to five miles from the city limits. Ark. Stat. Ann. § 19-2827(1). The planning commission of cities of the first and second class situated on navigable streams have planning and zoning jurisdiction over the territory lying along the stream for a distance of five miles of the corporate limits and for a distance of two miles laterally from the thread of the stream. Ark. Stat. Ann. § 19-2829(e).

Act 328 of 1949 (Ark. Stat. Ann. §§ 21-1001 et. seq.) provides for appropriate local agencies to take advantage of any Federal projects for improvements of rivers in and bordering on the State. This Act provides for the establishment of river improvement districts which are able to take full advantage of Federal river projects by providing the Federal authority with local agencies through which their work can be coordinated.

Arkansas has chosen to cooperate wherever possible with the Federal programs for flood control. Wherever these programs fall short, the State has the necessary authority to construct and maintain flood retarding structures and alter the flow of water.

(f) Discharge of Wastes

The Arkansas Pollution Control Commission was established to cope with the pollution problem in the waters and streams of the State. The General Assembly took notice that sewage, industrial waste and other wastes were creating a danger to public health, endangering fish and wildlife, and that an agency should have authority to check, supervise and inspect sewage and disposal systems. To effectuate a program for the reduction and elimination of water (and air) pollution the Arkansas Water and Air Pollution Control Act was enacted. Ark. Stat. Ann. §§ 83-901 et. seq.

The primary powers and duties of the Arkansas Pollution Control Commission are to approve waste treatment systems, monitor water quality in streams, establish pollution standards, conduct research surveys and administer Federal funds for the construction of waste disposal systems.

The remedy at law for damages has been held inadequate where injury to a stream is continuous and progressive. The Court held that a sand and gravel plant could be enjoined from polluting a stream with muddy wash water which rendered the stream unfit for the propagation of fish or bathing. Meriweather Sand and Gravel Company v. State, 181 Ark. 216, 26 S.W. 2d 57 (1930). An oil well company was permanently enjoined from polluting a stream with salt water even though this would require additional expense to prevent pollution. Spartan Drilling Co. v. Bull, 221 Ark. 168, 252 S.W. 2d 408 (1952).

In other cases the injured party resorted to a relief at law for damages. Damages have been recovered for injury caused by discharged tailings from a barium mine. Smith v. Magnet Cove Barium Corporation, 212 Ark. 491, 206 S.W. 2d 442 (1947), for damage caused by salt water discharging into a stream. Adair v. Frisby, 233 Ark. 515, 345 S.W. 2d 468 (1961); seepage from hog pens, Faires v. Dupree, 210 Ark. 797, 197 S.W. 2d 735 (1946); discharge of poisonous substances, Reynolds Metal Co. v. Ball, 217 Ark. 579, 232 S.W. 2d 441 (1950); and pollution by city sewers, City of Springdale v. Weathers, supra.

The measure of damages is the difference between the value of the land before and after the damage. Jones v. Sewer Imp. Dist. No. 3 of City of Rogers, 119 Ark. 166, 177 S.W. 888 (1915); City of Springdale v. Weathers, supra.

Under Act 381 of 1957, §§ 53-211 et. seq., corporations may be created for the disposal of salt water produced in connection with the production of oil and gas. The purpose of the act is to make mandatory that salt water produced from any newly discovered oil or gas fields be disposed of by recycling or storage in pits. It is unlawful to dispose of the brine in streams.

### (g) Construction of Public Water Supply

In order to have local water districts which are capable of qualifying for Federal funds it is necessary to give the United States a contract of assurance to use a Federally constructed water supply and pay additional costs of reservoir construction, the Regional Water Distribution District Act was enacted. §§ 21-1401 et. seq. In Hink v. Board of Directors of Beaver Water District, 235 Ark. 107, 357 S.W. 2d 271 (1962), the Court held that cities were authorized under this statute to enter into an agreement to purchase water from a water district, but in order not to be violative of Amendment 10 of the Arkansas Constitution a city's obligation would have to be payable only from its municipal waterworks revenues.

Municipalities have authority to purchase, construct or improve waterworks systems. This may be done in conjunction with other municipalities in a joint undertaking for mutual benefit. Municipalities through their boards of improvements have control of the construction in their respective districts. These boards have authority to advertise for bids and to accept or reject any proposals. Improvement districts may be formed to construct wholly new waterworks systems or to enlarge and reconstruct existing systems. Ark. Stats. Ann. §§ 19-4201, 19-4240, 20-311, 35-908, 20-338.

It has been held that the statute conferring power on municipal corporations to enter upon, take and condemn private property for construction of, among other things, waterworks systems, gives cities power to condemn either a waterworks system in its entirety or an integral part of one. Ark. Stats. Ann. § 35-902. Benton County Water Company, Inc. v. Cummings, _____ Ark. _____, 411 S.W. 2d 890 (1967).

## 2. Water Quality

The Arkansas Water and Air Pollution Control Act provides that the Arkansas Pollution Control Commission shall have the power to establish

and alter reasonable pollution standards for any waters of the State in relation to the use to which they are or may be put. Water quality control comes within the province of this Commission. Ark. Stat. Ann. §§ 82-1901 et. seq.

A regulation for the prevention of salt water and other oil field wastes has been in effect since November 1, 1958. This regulation provides that no person shall be allowed to discharge salt water or other oil field wastes into the waters of the State. The salt water waste must either be returned to the earth below the fresh water level or pumped into water-tight pits. Regulation No. 1, Arkansas Pollution Control Commission. As of June 1967, the Arkansas Pollution Control Commission is preparing a comprehensive regulation (Regulation No. 2) to establish water quality criteria for interstate streams. This regulation will establish methods for scientific water analysis as well as standards of quality and purity to be met and maintained. Regulation No. 2 provides that stream flow criteria are based on the assumption that existing flow conditions in interstate streams shall continue without material change.

## D. Jurisdiction of Water and Related Land

The United States Supreme Court discussed this subject in United States v. Chandler-Dunbar Water Power Company, 229 U. S. 53, 57 L. Ed. 1063 (1913) by saying:

> 1. The technical title to the beds of navigable rivers of the United States is either in the State or in the riparian owners, depending upon the local law.
>
> 2. Ownership of a private stream wholly upon the lands of an individual is conceivable; that the running water in a great navigable stream is capable of private ownership is inconceivable.

Arkansas deems the title to beds of navigable streams to be in the State. This is evidenced in many statutes, among them § 10-601 which declares:

> All islands formed or which may form in the navigable rivers or streams of this State, ... are hereby declared to be the property of the State ....

Our State case law vests title in the riparian owner only to the highwater mark along navigable waters, the title to the bed of the stream being in the State, Lutesville Sand and Gravel Co. v. McLaughlin, supra.

While Arkansas has never declared itself to be the owner of water within the State, it has such power and is the owner of water within its boundaries subject to rights of the Federal Government.

When activities related to water affect commerce and Congress exercises control of these activities through the commerce clause, the Federal Government preempts the field. For example, when Congress passes laws dealing with navigation, the State must bow to the Federal mandate.

## III. INSTRUMENTALITIES OF ARKANSAS CONCERNED WITH WATER & RELATED LAND RESOURCES

Most of Arkansas' institutions and agencies are created by the legislature and fall under the administration of the Governor's office. Local boards and political entities derive their existence from the municipalities and counties wherein they are situated or are created by order of the courts to function as authorized by the legislature from whence they receive their powers.

### A. State Agencies

#### 1. Soil & Water Conservation Commission

Composed of seven members appointed by the Governor, the Arkansas Soil and Water Conservation Commission was created by the Arkansas Legislature in 1963, taking on the powers and duties of what was previously the Water Conservation Commission, the Flood Control Commission, the Interstate Compact Commission, and the Geological and Conservation Commission insofar as they related to surface water runoff.

This Commission is charged with the responsibility of issuing permits for the construction of dams on streams after January 1, 1957, and allocating diversions from streams among riparian owners during periods of shortage.

Negotiations in interstate water compacts are conducted by and through the Soil and Water Conservation Commission.

The Soil and Water Conservation Commission is the state agency which accepts requests and establishes planning priorities for small watershed planning assistance under the Watershed Protection and Flood Prevention Act.

Information as to uses of and needs for the State's water resources is gathered and compiled by the Commission staff for developing the State's comprehensive water plan. For this purpose, the Arkansas Soil and Water Conservation Commission is the State agency authorized to receive grants from the Water Resources Council.

This Commission further has the all-inclusive power and authority to cooperate with similar agencies in other states, civic organizations, local interests, municipalities, counties, and other political subdivisions of the State, and with any of the several federal departments and agencies to promote and encourage the

development and prosecution of plans for any project for the conservation, development, utilization and disposal of water, the improvement and protection of rivers and harbors, flood control, soil conservation, river navigation or hydroelectric power.

### 2. Stream Preservation Committee

A state agency composed of 17 members appointed by the Governor, the Stream Preservation Committee was created by the legislature in 1967 to study, locate and designate selected high-quality streams which are relatively unaltered; make preliminary surveys to ascertain value of preserving streams in natural state; evaluate potentials of designated streams; prepare preliminary report for presentation to Governor, General Assembly and others.

### 3. Waterways Commission

A state agency composed of 7 members appointed by the Governor with Senate approval, the Waterways Commission was created in 1967 to promote and coordinate water transportation development, river ports and harbors, water recreation; develop in cooperation with federal and state agencies equitable fee systems for water transportation services; and perform other functions for state with respect to water transportation resources and facilities.

### 4. Planning Commission

Composed of seven members appointed by the Governor, the Arkansas Planning Commission was created by Act No. 15 of 1963. This Commission is responsible for preparing and adopting an official State Plan for the physical development of the State. This plan may include the general location of highways, bridges, waterways, water front development, railroad and motor vehicle routes, aviation fields, power transmission facilities, flood prevention work, drainage and sanitary systems, work for the prevention of stream pollution, forest reservations, parks, wildlife refuges, conservation projects, and land utilization programs for agricultural, mineral, forestry, industrial and other purposes. The Commission has the responsibility to prepare and keep current the State Comprehensive Outdoor Recreation Plan.

The function of the Beautification Division of the Commission is (among others) to assist municipalities in preparing and submitting applications for Federal assistance to the Housing and Urban Development Administration for urban beautification of the State.

The Arkansas Planning Commission is also the designated state agency for the administration of the Land and Water Conservation Fund Act of 1965 (P. L. 88-578) which provides assistance in the acquisition and development of recreational sites for the state and its political subdivisions.

### 5. Publicity and Parks Commission

Consisting of seven members appointed by the Governor, the State Publicity and Parks Commission was created by Act No. 330 of 1955.

The Publicity Division of the Commission promotes recreation, tourism, and general activities pertaining to all State Park areas, lakes, rivers and mountains.

The Parks Division of the Commission is administered to provide areas and facilities for outdoor recreation for the people of the State and visitors to the State and preserve certain areas of scenic, scientific, geological and historical significance that should be provided for future generations. Further, this division administers and supervises the operation of lodges, housekeeping cottages, over-night cottages, cafes, group facilities, boat docks, refreshment stands, picnic and camping areas and swimming pools in the various parks.

This Commission is authorized to contract with the federal government under the cost-sharing provisions of the Federal Water Project Recreation Act of 1965 (P. L. 89-72), to operate and maintain recreation areas at Federally constructed reservoirs and to contract to repay the Federal Government for the non-federal share of separable costs of such recreation facilities and land.

### 6. Pollution Control Commission

The Pollution Control Commission consists of eight members; one representative of each of the following agencies:

(1) State Board of Health
(2) Game and Fish Commission
(3) Oil and Gas Commission
(4) Soil and Water Conservation Commission
(5) State Forestry Commission

and three members appointed by the Governor representing industry, municipalities, and agricultural and livestock interests in the State.

## 7. State Health Department

Under supervision of the State Board of Health, consisting of eleven members appointed by the Governor, and under the direction of the State Health Officer, the Arkansas State Health Department administers through a Central Administration and various Bureaus, Divisions, Services, and a system of Local Health Departments.

The Bureau of Environmental Engineering is basically responsible for the safety of domestic water supplies as well as food and milk supplies, plumbing, and control of diseases attributable to the environment whether it be in the home, factory, or recreational.

The Division of Radiological Health conducts, among other activities, environmental surveillance and monitoring of radio-active materials in water and performs chemical analysis of water.

For these foregoing reasons the State Board of Health is also represented on the Pollution Control Commission.

## 8. State Game and Fish Commission

In 1945, the 35th Amendment to the Constitution of the State of Arkansas provided that "the control, management, restoration, conservation and regulation of birds, fish, game and wildlife resources of the State, including hatcheries, sanctuaries, refuges, reservations and all property now owned, or used for said purposes and the acquisition and the establishment of same ... shall be vested in ... the Arkansas State Game and Fish Commission, to consist of eight members. Seven of whom shall be active and one, an associate member, who shall be the Head of the Department of Zoology at the University of Arkansas, without voting power."

The Commission has "the power to acquire by purchase, gifts, eminent domain, or otherwise, all property necessary, useful or convenient" for the exercise of any of its duties and may spend such monies as are necessary to match Federal grants for the propagation, conservation and restoration of game and fish.

## 9. Oil and Gas Commission

As well as conserving the State's oil and natural gas resources, the Arkansas Oil and Gas Commission, composed of seven members appointed by the Governor, encourages and aids in the development of plans for gathering, storing, impounding or otherwise disposing

of salt water produced in the drilling and operation of oil wells and to prevent the flow of such water into the streams of the State. For this purpose this Commission is also represented on the Arkansas Pollution Control Commission.

## 10. Forestry Commission

Consisting of nine members appointed by the Governor, three of which must be small tree farmers, the State Forestry Commission was created for the purpose of raising the level of income of the people of the state through the development of its forestry industry.

The Commission has the power and authority to acquire and designate lands as State Forests to be administered, protected and developed for the purpose of watershed protection, erosion and flood control, and recreation as well as forestation, reforestation and the production of forest crops.

This Commission is also represented as a member of the Arkansas Pollution Control Commission.

## 11. Geological Commission

Under the direction of a seven-member commission, appointed by the Governor, the Arkansas Geological Commission provides industry, the general public, and agencies with information concerning the quantity and quality of water resources, the presence of oil and gas and other mineral resources located within the State. The U. S. Geological Survey, in cooperation with the Geological Commission, conducts regional water-resource investigations and supplies the State with reports on its findings. In return, the State pays half the cost of the investigations and preparation of such reports. Topographic maps published by the U. S. Geological Survey may be obtained from the Arkansas Geological Commission.

Community water studies are conducted by the Commission personnel. Analysis and testing is conducted in the laboratory, which has facilities for wet chemical analysis, fire assays, spectrographic analysis, etc. The results of studies are for the most part eventually included in published reports which are available for purchase as well as for loan from the Commission's library.

## 12. Public Service Commission

The Arkansas Public Service Commission, composed of three members appointed by the Governor, has jurisdiction over the operations

of individuals, partnerships, and corporations owning or operating facilities within the State and engaged in the business of selling water to the public.

The Assessment Coordination Division prepares and promulgates Real Estate and Personal Property Assessment Manuals for the use and guidance of County Assessors and County Equalization Boards. Such manuals contain information and procedure for the classification of lands, the determination of values of land and improvements thereto.

The Public Service Commission is also responsible for regulating navigable water crossings by a public service facility, i.e., an electric power line or pipe line.

### 13. Industrial Development Commission

The Arkansas Industrial Development Commission, consisting of thirteen members appointed by the Governor, compiles statistics and information in respect to the natural resources (including water and power resources) of the State. The Commission publishes and distributes such information in such manner as to promote industrial enterprise within the State.

### 14. White River Navigation District Commission

Consisting of five members appointed by the Governor, the White River Navigation District Commission is a special agency of the State for the purpose of encouraging the proper development of the White River and its tributaries.

This Commission is to cooperate with the Corps of Engineers on local matters pertaining to the navigation feasibility of the White River--such as obtaining rights-of-way, easements, and giving indemnification to the Corps.

## B. University of Arkansas

Through the Industrial Research and Extension Center and its Agricultural Extension Service, located at 12th and McAlmont in Little Rock, the University of Arkansas puts its educational wealth to practical use in conducting statistical analysis of all the State's resources, evaluates economic potential thereof, and publishes reports available to the various interested groups on the

State's industrial and agricultural projections based on a proper and equitable use of the State's water and related land resources.

The Agricultural Extension Service has the educational responsibility for the storage, conservation and wise use of water as it relates to agricultural production. Currently agricultural crops are the largest users of water in Arkansas. The Agricultural Extension Service has one full-time specialist on Soil and Water Conservation.

The Water Resources Research Center, located on the Fayetteville campus, and established in accordance with the provisions of Section 100 of Title I of the Water Resources Research Act of 1964, conducts research, investigations, and experiments in relation to water resources and trains, competent, professional water resources scientists through such research, investigations, and experiments. This Center also participates in coordination with the Arkansas Soil and Water Conservation Commission under Section 101 of Title I of the Water Resources Research Act.

## C. Political Subdivisions

### 1. Soil & Water Conservation Districts

Unlike most other local political units, Soil and Water Conservation Districts are created by petitioning a state agency, the Soil and Water Conservation Commission.

These districts are created for the purpose of and have the power to carry out preventive and control measures and works of improvement for flood prevention or the conservation, development, and utilization of soil and water resources and the disposal of water within the district. They may also cooperate, or enter into agreements with, and furnish financial or other aid to, any agency or owner of lands within the district for the above-named purposes.

These districts are very active in watershed improvement projects and are chief sponsors of P. L. 566 projects by the SCS. By order of the Chancery Court a Soil and Water Conservation District may be authorized to construct works of improvement with the aid of taxation and the power of condemnation.

### 2. Water Distribution Districts

Regional water distribution districts, created under the provisions of the Regional Water Distribution Act, Ark. Acts 1957, No. 114,

are public, nonprofit organizations, for the purpose of engaging in water distribution activities, to wit:

(1) The acquisition of water, water storage facilities, and storage capacity for such water in Corps of Engineers reservoirs, or reservoirs constructed by the Water District with assistance by the Soil Conservation Service.

(2) The purification, treatment and processing of said water.

(3) Furnishing said water to persons desiring the same.

(4) Assisting in the installation and operation of water use and transportation facilities of persons furnished said water by the district and the distribution of equipment necessary therefor.

(5) Transportation and delivery of said water to customers.

Said districts are created pursuant to an investigation and report of the Arkansas Soil & Water Conservation Commission and by order of circuit court.

Water districts may exercise the power of eminent domain and may fix, regulate and collect fees and other charges for water, facilities and services furnished. These districts are exempt from the jurisdiction and control of the Arkansas Public Service Commission.

### 3. Watershed Improvement Districts

With the advent of P. L. 566, watershed improvement districts, created by order of chancery or circuit court under the provisions of the Arkansas Irrigation, Drainage and Watershed Improvement District Act of 1949, are chiefly concerned with and engaged in watershed projects within the purview of that Act. The purposes of organization are generally to provide facilities for irrigation, flood control, drainage, recreation, fish and wildlife, and to prevent soil erosion and sediment damage.

Watershed Improvement Districts, through their boards, may assess benefits and damages to all lands within the district, and by order of the circuit or chancery court, may issue negotiable bonds.

## 4. Levee Districts

In 1891 the several county courts of the State were authorized to establish one or more Levee Districts within their respective territorial jurisdiction to include lands subject to overflow, especially along river fronts, to provide for the construction of a levee or system of levees for the protection of these lands from overflowing crevasses. Each Levee District board is composed of three elected directors.

Where land in two or more counties is subject to overflow from the same river, crevass, or direction, and can be protected by the same levee or system of levees, several districts, with the approval of their respective county judges may consolidate into one district for the whole region.

Levee districts are by statute endowed with the power of taxation of all benefited lands and may acquire land by condemnation.

A levee district may cooperate with any similar district in another state if necessary to complete and maintain their system of levees.

## 5. Drainage Districts

Even though some drainage districts in Arkansas were formed by special act, these districts are usually formed by the county court where the lands embraced within the district are wholly within one county. Where the boundaries of a proposed Drainage District cross county lines the circuit court of the county wherein the largest portion of the lands lie is the proper court to form the district. The governing body of each district is composed of three commissioners appointed by the court.

These districts are created for the purpose of planning and constructing a system of drainage for the use of all landowners within the district. They have the power to issue bonds to assess benefits upon lands within the district (county court order levies the tax), to condemn property, and to secure aid from the Federal government and other agencies.

All drainage districts in the State are authorized by the legislature to make necessary surveys for securing Federal Aid and assistance in the construction of dams and reservoirs for impounding head waters which cause floods that overflow the ditches and wash away the levees and crops and erode the lands in the district.

## 6. Combination Levee and Drainage Districts

Levee and drainage districts may combine themselves into one district administered by a three-member Board of Improvement.

In constructing flood control works for levee districts, drainage districts, or levee and drainage districts, federal agencies may exercise the right of eminent domain through condemnation proceedings under the laws of the United States, even though the districts must make the compensation.

## 7. County Planning Boards

County Planning Boards, which consist of not less than 5 nor more than 12 members appointed by the County Judge, are created throughout many of the counties to prepare and adopt an official plan for the physical development of all or part of the rural territory of the County. This plan may include among other things the general location, character and extent of water conservation and flood prevention projects, water supply, sanitary and drainage facilities, water front developments, land conservation projects, forests, reservations, parks, and other features of public works logically related to the physical economic development of the County.

The authority of a County Planning Board also extends to:

(1) the promotion of long term county planning.

(2) Assurance of proper coordination of County development with that of other political subdivisions.

(3) Making studies and preparing plans covering land use of rural areas within the County.

(4) Zoning of unincorporated lands within the County.

## 8. Rural Development Authorities

The Rural Development Authority of the respective counties of the State may be activated by resolution of the County Court. This authority is headed by a five-member commission appointed by the County Court.

Any Rural Development Project may include development of recreational facilities, soil and water conservation improvements, flood control

structures, and other projects for the development, storage, and utilization of water for agricultural, domestic, industrial, and community purposes, the development or improvement of sanitation measures, including sewage and sewage disposal facilities and anti-pollution measures.

The County through this Authority may issue bonds and cooperate with appropriate Federal and State agencies. The Authorities may not tax but have further powers not mentioned in this appendix.

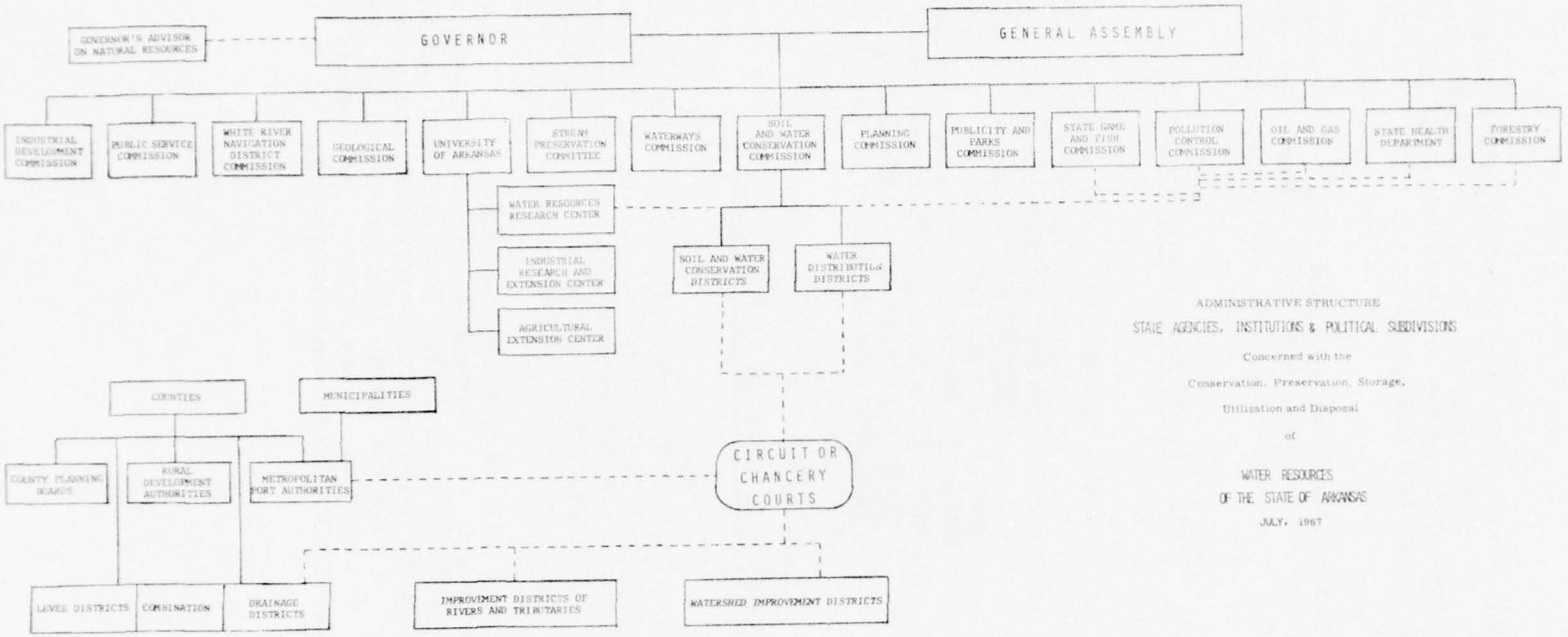
### 9. Improvement Districts of Rivers and Tributaries

Whenever Congress shall enact a law adopting and authorizing a project for the improvement of any River, Tributary, or Stream of or bordering on the State, a district within the area embraced by the project so authorized by Congress may be established by petitioning the Circuit Court. Said district has all the rights, powers and privileges of drainage districts, provided however, it is limited to the purposes of complying with requirements made of the local interests of drainage, levee or flood control projects approved and authorized by Congress and constructed by a Federal Agency.

### 10. Metropolitan Port Authorities

Any municipality or county or any combination of one or more municipalities and/or one or more counties, within or near which there is located a navigable water course may organize and cause to be established by order of circuit court a "metropolitan port authority" to be governed by a Board of Directors.

The primary goal of port authorities in the State of Arkansas which are public bodies corporate, created and administered in accordance with Ark. Acts 1961, No. 439, is to attract industry through the establishment, development, improvement and maintenance of harbors, ports, river-rail and barge terminals; and for the accomplishment of these purposes, these authorities possess extensive powers, including eminent domain and borrowing money.




ADMINISTRATIVE STRUCTURE

STATE AGENCIES, INSTITUTIONS & POLITICAL SUBDIVISIONS

Concerned with the

Conservation, Preservation, Storage,

Utilization and Disposal

of

WATER RESOURCES

OF THE STATE OF ARKANSAS

JULY, 1967

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# COMPREHENSIVE BASIN STUDY

## RED RIVER BELOW DENISON DAM

## L O U I S I A N A

## STATE LAWS AND PROGRAMS

pertaining to

## WATER AND RELATED LAND RESOURCES

January 16, 1968

STATE OF LOUISIANA
DEPARTMENT OF PUBLIC WORKS

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# WATER LAWS OF LOUISIANA

For the time being, Louisiana has a dearth of laws on the subject of water rights.

The basic principles are expressed in Articles 450 and 661 of the Revised Civil Code and Sections 218 of Title 38 and 1101 of Title 9 of the Louisiana Revised Statutes of 1950.

Article 450 of the Revised Civil Code provides that:

> "Things, which are common, are those the ownership of which belongs to nobody in particular, and which all men may freely use, conformably with the use for which nature has intended them; such as air, running water, the sea and its shores."

and Article 661 provides that:

> "He whose estate borders on running water, may use it as it runs, for the purpose of watering his estate, or for other purposes.
>
> He through whose estate water runs, whether it originates there or passes from lands above, may make use of it, while it runs over his lands; but he can not stop or give it another direction, and is bound to return it to its ordinary channel, where it leaves his estate."

Section 218 of Title 38 of the Louisiana Revised Statutes of 1950 provides that:

> "No person diverting or impeding the course of water from a natural drain shall fail to return the water to its natural course before it leaves his estate without any undue retardation of the flow of water outside of his enclosure thereby injuring an adjacent estate ...."

and Section 1101 of Title 9 provides that:

> "The waters of and in all bayous, rivers, streams, lagoons, lakes and bays, and the beds thereof, not under the direct ownership of any person on August 12, 1910, are declared to be the property of the state. There shall never be any charge assessed against any person for the use of the waters of the state for municipal, industrial, agricultural or domestic purposes.
>
> While acknowledging the absolute supremacy of the United States of America over the navigation on the navigable waters within the borders of the state, it is hereby declared that the ownership of the water itself and the beds thereof in the said navigable waters is vested in the state and that the state has the right to enter into possession of these waters when not

interfering with the control of navigation exercised thereon by the United States of America. This Section shall not affect the acquisition of property by alluvion or accretion.

All transfers and conveyances or purported transfers and conveyances made by the state of Louisiana to any levee district of the state for any navigable waters and the beds and bottoms thereof are hereby rescinded, revoked and canceled.

This Section is not intended to interfere with the acquisition in good faith of any waters or the beds thereof transferred by the state or its agencies prior to August 12, 1910."

The portion of the above section, however, which provides that there shall never be any charge assessed against any person for the use of the waters of the state for municipal, industrial, agricultural, or domestic purposes has been repealed in a number of instances.

Section 2328 of Title 38 of the Louisiana Revised Statutes of 1950 and Section 45 of the Constitution of Louisiana, respectively, gave the Sabine River Authority all rights possessed by the State of Louisiana in the waters of the Sabine River and authorized the Sabine River Authority to impose such reasonable charges therefor as it may deem proper.

Other political subdivisions of the state which are authorized to sell the waters of certain bodies of water are the Bayou D'Arbonne Lake Watershed District, R.S. 38:2551 et seq.; the Cypress-Black Bayou Recreation and Water Conservation District, R.S. 38:2601 et seq.*; the Recreation and Water Conservation District of St. Helena Parish, R.S. 38:2651 et seq.*; the Black Lake Bayou Recreation and Water Conservation District of Red River Parish, R.S. 38:2701 et seq.*; the Bayou DeSiard-Bayou Bartholomew Cut-Off Loop Water Conservation Board, R.S. 38:2751 et seq.**; the Franklin Parish Watershed District, R.S. 38:2801 et seq.***, the Black Bayou Watershed District, R.S. 38:2821 et seq.***; the Iatt Lake Water Conservation District, LSA - Const. Art. 15 § 4* (specifically authorized to divert water from one watershed to another); and the Bayou Lafourche Fresh Water District, LSA - Const. Art. 15 § 3 and Act No. 113 of 1950****.

* Authorized to sell water made available by its facilities.

** Authorized to sell water made available by its facilities, but may not assess any charge against any municipality or other political subdivision.

*** Authorized to contract for the sale of water impounded by it.

**** Authorized to sell water furnished by it from the Mississippi River.

In addition, R.S. 33:4511 authorizes parishes and municipalities east of the Mississippi River to grant franchises to private nonprofit corporations for the taking, transportation and sale of surface water from lakes and streams within the governmental subdivision granting the franchise.

Section 6 of Article 13 of the Constitution of Louisiana provides that:

> "Corporations formed or to be formed under the laws of this State for the purpose of constructing and operating gravity canals for irrigation and navigation, as well as plants for the generation and distribution of hydro-electric power, shall have the right, under such regulations as shall be prescribed by the State Board of Engineers, to utilize for such purpose the waters of the navigable streams of this State, as well as the right to use as reservoirs or for the storing of water for such purpose the deserted beds of former navigable streams which may be the property of the State; provided, that at the end of seventy years from the completion of any system of canals and hydro-electric plants by corporations availing themselves of the authority so granted, their property and plants shall become the property of the State, to be operated by it for public revenue in such

manner as the Legislature shall direct; and provided further, that none of these provisions shall be constructed to apply to canals in existence prior to January 21st, 1921."

and Section 62 of Title 45 of the Louisiana Revised Statutes of 1950, which provides that:

"Corporations, operating under R.S. 45:61 (Corporations formed under the laws of this state for the purpose of constructing and operating canals for irrigation by gravity,) have the right to utilize waters of navigable streams and other waters of the state for irrigation purposes, under regulations which the Department of Public Works shall prescribe, for the purpose of preventing unnecessary injury to private and public property."

Insofar as ground water is concerned, there in only one statutory provision in Louisiana remotely applicable, and that is Article 505 of the Revised Civil Code which provides that:

"The ownership of the soil carries with it the ownership of all that is directly above and under it.

The owner may make upon it all the plantations, and erect all the buildings which he thinks proper, under the exceptions established in the title: Of Servitudes.

He may construct below the soil all manner of works, digging as deep as he deems convenient, and draw from them all the benefits which may accrue, under such modifications as may result from the lands and regulations concerning mines and the laws and regulations of the police."

It has been held, however, that subterranean waters are fugitive substances similar to oil and gas and are subject to ownership only when withdrawn from the earth and reduced to possession, Adams vs. Grigsby, 152 So. 2d 619 (1963).

There is a possibility that the situation with reference to statutory law may change in the not too distant future for by Act No. 188 of 1964 the Legislature of Louisiana created a Water Resources Study Commission to make a comprehensive study of the ground and surface water resources of the state and the legislation necessary for their preservation and to make its recommendations to the Legislature.

The following is a complete compilation of all the relevant statutory material and jurisprudence prepared by members of the faculty and staff of Louisiana State University School of Law under the direction of George H. Hardy III for the Louisiana Water Resources Research Institute:

RIGHTS OF PROPERTY OWNERS, IRRIGATION, AND DRAINAGE

Sec. 1, Ownership of Surface Water

Sec. 1.1 Non-Navigable Waters

(Louisiana Civil Code)

Art. 450: Things, which are common, are those the ownership of which belongs to nobody in particular, and which all men may freely use, conformably with the use for which nature has intended them; such as air, running water, the sea and its shores.

Art. 482: Among those which are not susceptible of ownership, there are some which can never become the object of it; as things in common, of which all men have the enjoyment and use.

There are things, on the contrary, which, though naturally susceptible of ownership, may lose this quality in consequence of their being applied to some public purpose, incompatible with private ownership; but which resume this quality as soon as they cease to be applied to that purpose; such as the high roads, streets and public places.

Art. 505: The ownership of the soil carries with it the ownership of all that is directly above and under it.

The owner may make upon it all the plantations, and erect all the buildings which he thinks proper, under the exceptions established in the title: Of Servitudes.

He may construct below the soil all manner of works, digging as deep as he deems convenient, and draw from them all the benefits which may accrue, under such modifications as may result from the laws and

regulations concerning mines and the laws and regulations of the police.

(Louisiana Revised Statutes)

R.S. 9:2971: It shall be conclusively presumed that any transfer, conveyance, surface lease, mineral lease, mortgage or any other contract or grant affecting land described as fronting on or bounded by a waterway, canal, highway, road, street, alley, railroad or other right of way, shall be held, deemed and construed to include all of grantor's interest in and under such waterway, canal, highway, road, street, alley, railroad, or other right of way whatever that interest may be, in the absence of any express provision therein particularly excluding the same therefrom; provided that where the grantor at the time of the transfer or other grant holds as owner the title to the fee of the land situated on both sides thereof and makes a transfer or other grant affecting the land situated on only one side thereof, it shall then be conclusively presumed, in the absence of any express provision therein particularly excluding the same therefrom, that the transfer or other such grant thereof shall include the grantor's interest to the center of such waterway, canal, highway, road, street, alley, railroad, or other right of way; provided, further, however, that no then existing valid right of way upon, across or over said property so transferred or conveyed or so presumed to be conveyed and no warranties with respect thereto shall be in any manner or to any extent impaired, prejudiced, or otherwise affected by any of the terms and provisions of this Part or because of

the failure of such grantor or transferor to therein make special reference to such right of way or to include or exclude same therefrom. Acts 1956, Nos. 555, Sec. 1.

R.S. 9:2973: Any person who has made a transfer or other grant affecting land so described, their heirs or assigns whose rights may be affected hereby, shall have a period of one year from August 1, 1956, within which to preserve and protect such rights, by: (a) filing suit in each parish where such land is situated, asserting such rights, or (b) by recording a notarized declaration asserting such rights in the conveyance records of each parish where such land is situated within such one year period; and in case neither said method of preserving such rights is followed within one year from August 1, 1956, said rights shall be forever barred. Acts 1956, No. 555, Sec. 3.

R.S. 9:5661: Actions, including those by the State of Louisiana, to annul any patent issued by the state, duly signed by the governor and the register of the state land office, and of record in the state land office, are prescribed by six years, reckoning from the day of the issuance of the patent.

## Jurisprudence

### Sec. 1.2. Navigable Waters

(Louisiana Civil Code)

Art. 450: Things, which are common, are those the ownership of which belongs to nobody in particular, and which all men may freely use, conformably with the use for which nature has intended them; such as air, running water, the sea and its shores.

Art. 453: Public things are those, the property of which is vested in a whole nation, and the use of which is allowed to all the members of the nation, of this kind are navigable rivers, seaports, roadsteads and harbors, highways and the beds of rivers, as long as the same are covered with water.

Hence it follows that every man has a right freely to fish in the rivers, ports, roadsteads, and harbors.

Art. 482: Among those which are not susceptible of ownership, there are some which can never become the object of it; as things in common, of which all men have the enjoyment and use.

There are things, on the contrary, which though naturally susceptible of ownership, may lose this quality in consequence of their being applied to some public purpose, incompatible with private ownership; but which resume this quality as soon as they cease to be applied to that purpose; such as the high roads, streets, and public places.

(Louisiana Revised Statutes)

R.S. 9:1101: The waters of and in all bayous, rivers, streams, lagoons, lakes and bays, and the beds thereof, not under the direct ownership of any person on August 12, 1910, are declared to be the property of the state. There shall never be any charge assessed against any person for the use of the waters of the state for municipal, industrial, agricultural or domestic purposes.

While acknowledging the absolute supremacy of the U. S. of America over the navigation on the navigable waters within the borders of the state, it is hereby declared that the ownership of the water itself and the beds thereof in the said navigable waters is vested in the state and that the state has the right to enter into possession of these waters when not interfering with the control of navigation exercised thereon by the U. S. of America.

All transfers and conveyances or purported transfers and conveyances made by the state of Louisiana to any levee district of the state of any navigable waters and the beds and bottoms thereof are hereby rescinded, revoked and cancelled.

This Section is not intended to interfere with the acquisition in good faith of any waters or the beds thereof transferred by the State or its agencies prior to August 12, 1910.

R.S. 9:1107: It has been the public policy of the State at all times since its admission into the Union that all navigable waters and the beds of same within its boundaries are common or public things and insusceptible of private ownership; that no act of the legislature has been enacted in contravention of said policy, and that the intent of the legislature at the time of the enactment . . . of R.S. 9:5661, and continuously thereafter was and is now to ratify and confirm only those patents which conveyed or purported to convey public lands susceptible of private ownership of the nature and character, the alienation or transfer of which was authorized by law but not patents or transfers which purported to transfer navigable waters and the beds of same.

R.S. 9:1108: Any patent or transfer heretofore or hereafter issued or made is null and void, so far as same purports to include such navigable waters and the beds thereof, as having been issued or made in contravention of the public policy of this state and without any prior authorization by law; provided that the provisions of this Section shall not ... apply to lands that were susceptible to private ownership on the date of the patent or transfer by the state or its agency.

R.S. 9:1109: No statute enacted by the legislature shall be construed as to validate by reason of prescription or peremption any patent or transfer issued by the state or any levee district, so far as the same purports to include navigable or tide waters or the beds of same.

R.S. 9:5661: Actions, including those by the State of Louisiana, to annul any patent issued by the state, duly signed by the governor, and the register of the state land office, and of record in the state land office, are prescribed by six years, reckoning from the day of the issuance of the patent.

33 U.S.C.A. 10: All navigable rivers and waters in the former Territories of Orleans and Louisiana shall be and forever remain public highways.

## Sec. 2. Right to Use and Divert Surface Waters

### Sec. 2.1 Irrigation

(Louisiana Civil Code)

Art. 653: Servitudes being essentially due from one estate to another for the advantage of the latter, they remain the same as long as no change takes place in regard to the two estates, whatever change may take place in the owners.

Art. 654: Servitude is a right so inherent in the estate to which it is due, that the faculty of using it, considered alone and independent of the estate, can not be given, sold, let or mortgaged without the estate to which it appertains, because it is a servitude which does not pass to the person but by means of the estate.

Art. 661: He whose estate borders on running water, may use it as it runs, for the purpose of watering his estate, or for other purposes.

He through whose estate water runs, whether it originates there or passes from lands above, may make use of it, while it runs over his lands; but he cannot stop or give it another direction, and is bound to return it to its ordinary channel, where it leaves his estate.

Art. 674: The other particular servitudes imposed by law relate to the following objects:

1. To boundary walls, inclosures and ditches:

2-5 omitted.

Art. 689: Every ditch between two estates shall be supposed held in common, unless there be a voucher or proof to the contrary.

Art. 714: The right of drain consists in the servitude of passing water collected in pipes or canals through the estate of one's neighbor.

This servitude is different from the right of drip, because the charge it imposes is more onerous.

It is much less inconvenient to receive the rain which falls than a body of water which may carry away the land by its violence.

The contrary servitude is the right of preventing this passage of water.

Art. 720: The right of drawing water is a servitude by which one suffers his neighbor to draw water from the well or spring he has on his land; the use of this servitude is confined to those who live in the house of the person enjoying the servitude, unless the contrary be expressed in the title.

Art. 721: The principal rural servitudes are those of passage, of way, of taking water, of the conducting of water or aqueduct, of watering, of pasturage, of burning brick or lime, and of taking earth or sand from the estate of another.

Art. 723: The right of drawing water from the spring of another is also a servitude.

Art. 724: The conducting of water or aqueduct is the right by which one conducts water from his estate through the land of his neighbor by means of an aqueduct or ditch.

Art. 727: Servitudes are either continuous or discontinuous.

Continuous servitudes are those whose use is or may be continual without the act of man.

Such are aqueducts, drain, view and the like.

Discontinuous servitudes are such as need the act of man to be exercised.

Such are the rights of passage, of drawing water, pasture and the like.

Art. 743: Servitudes are established by all acts by which property can be transferred, and as they are not susceptible of real delivery, the use which the owner of the estate to whom the servitude is granted, makes of this right, supplies the place of delivery.

Art. 752: Legal servitudes and even those which result from the situation of places, may be altered by the agreement of parties, provided the public interest does not suffer thereby.

Art. 756: If the right granted be of a nature to assure a real advantage to an estate, it is to be presumed that such right is a real servitude, although it may not be so styled.

Thus, for example, if the owner of a house contiguous to lands bordering on the high road, should stipulate for the right of passing through lands, without it being expressed that the passage is for the use of his house, it would be not the less a real servitude, for it is evident that the passage is of real utility to the house.

Art. 757: If, on the other hand, the concession from its nature is a matter of mere personal convenience, it is considered personal, and can not be made real but by express declaration of the parties.

Thus, for example, if the owner of a house near a garden or park, should stipulate for the right of walking and gathering fruits and flowers therein, this right would be considered personal to the individual, and not a servitude in favor of the house or its owner.

But the right becomes real and is a predial servitude, if the person stipulating for the servitude, acquires it as owner of the house, and for himself, his heirs and assigns.

Art. 789: A right to servitude is extinguished by the non-usage of the same during ten years.

Art. 795: Prescription for non-usage does not take place against natural or necessary servitudes, which originate from the situation of places.

## Sec. 2.2. Drainage

(Louisiana Civil Code)

Art. 505: The ownership of the soil carries with it the ownership of all that is directly above and under it.

The owner may make upon it all the plantations, and erect all the buildings which he thinks proper, under the exceptions established in the title: Of Servitudes.

He may construct below the soil all manner of works, digging as deep as he deems convenient, and draw from them all the benefits which may accrue, under such modifications as may result from the laws and regulations concerning mines and the laws and regulations of the police.

Art. 660: It is a servitude due by the estate situated below to receive the waters which run naturally from the estate situated above, provided the industry of man has not been used to create that servitude.

The proprietor below is not at liberty to raise any dam, or to make any other work, to prevent this running of the water.

The proprietor above can do nothing whereby the natural servitude due by the estate below may be rendered more burdensome.

Art. 667: Although a proprietor may do with his estate whatever he pleases, still he can not make any work on it, which may deprive his neighbor of the liberty of enjoying his own, or which may be the cause of any damage to him.

Art. 668: Although one be not at liberty to make any work by which his neighbor's buildings may be damaged, yet every one has the liberty of doing on his own ground whatsoever he pleases, although it should occasion some inconveniences to his neighbor.

Thus he who is not subject to any servitude originating from a particular agreement in that respect, may raise his house as high as he pleases, although by such elevation he should darken the lights of his neighbor's (neighbors') house, because this act occasions only an inconvenience, but not a real damage.

Art. 674: The other particular servitudes imposed by law relate to the following objects:

1. To boundary walls, inclosures and ditches:

2-5 omitted.

Art. 689: Every ditch between two estates shall be supposed held in common, unless there be a voucher or proof to the contrary.

Art. 714: The right of drain consists in the servitude of passing water collected in pipes or canals through the estate of one's neighbor.

This servitude is different from the right of drip, because the charge it imposes is more onerous.

It is much less inconvenient to receive the rain which falls than a body of water which may carry away the land by its violence.

The contrary servitude is the right of preventing this passage of water.

Art. 721: The principal rural servitudes are those of passage, of way, of taking water, of the conducting of water or aqueduct, of watering, of pasturage, of burning brick or lime, and of taking earth or sand from the estate of another.

Art. 724: The conducting of water or aqueduct is the right by which one conducts water from his estate through the land of his neighbor by means of an aqueduct or ditch.

Art. 727: Servitudes are either continuous or discontinuous.

Continuous servitudes are those whose use is or may be continual without the act of man.

Such are aqueducts, drain, view and the like.

Discontinuous servitudes are such as need the act of man to be exercised.

Such are the rights of passage, of drawing water, pasture and the like.

Art. 743: Servitudes are established by all acts by which property can be transferred, and as they are not susceptible of real delivery, the use which the owner of the estate to whom the servitude is granted, makes of this right, supplies the place of delivery.

Art. 752: Legal servitudes and even those which result from the situation of places, may be altered by the agreement of parties, provided the public interest does not suffer thereby.

Art. 756: If the right granted be of a nature to assure a real advantage to an estate, it is to be presumed that such right is a real servitude, although it may not be so styled.

Thus, for example, if the owner of a house contiguous to lands bordering on the high road, should stipulate for the right of passing through lands, without it being expressed that the passage is for the use of his house, *it would be not less a real servitude*, for it is evident that the passage is of real utility to the house.

Art. 757: If, on the other hand, the concession from its nature is a matter of mere personal convenience, it is considered personal, and can not be made real but by express declaration of the parties.

Thus for example, if the owner of a house near a garden or park, should stipulate for the right of walking and gathering fruits and flowers therein, this right would be considered personal to the individual, and not a servitude in favor of the house or its owner.

But the right becomes real and is a predial servitude, if the person stipulating for the servitude, acquires it as owner of the house, and for himself, his heirs and assigns.

Art. 777: The owner of the estate which owes the servitude can do nothing tending to diminish its use, or to make it more inconvenient.

Thus, he can not change the condition of the premises, nor transfer the exercise of the servitude to a place different from that on which it was assigned in the first instance.

Yet if this primitive assignment has become more burdensome to the owner of the estate which owes the servitude, or if he is thereby prevented from making advantageous repairs on his estate, he may offer to the owner of the other estate a place equally convenient for the exercise of his rights, and the owner of the estate to which the servitude is due can not refuse it.

Art. 778: On the other hand, he who has a right of servitude can use it only according to his title, without being at liberty to make either in the estate which owes the servitude, or in that to which the servitude is due, any alteration by which the condition of the first may be made worse.

Art. 789: A right to servitude is extinguished by the non-usage of the same during ten years.

Art. 795: Prescription for non-usage does not take place against natural or necessary servitudes, which originate from the situation of places.

Note: The Revised Statutes on drainage districts may be found in Chapter 2, Section 17 of this compilation.

Sec. 2.3 Pollution

(Louisiana Civil Code)

Art. 661: He whose estate borders on running water, may use it as it runs, for the purpose of watering his estate, or for other purposes.

He through whose estate water runs, whether it originates there or passes from lands above, may make use of it, while it runs over his lands; but he can not stop or give it another direction, and is bound to return it to its ordinary channel, where it leaves his estate.

(Louisiana Revised Statutes)

R.S. 56:1434: The Stream Control Commission of Louisiana has control of waste disposal, public or private, by any person, into any of the waters of the state or tributaries flowing into such waters for the prevention of pollution tending to destroy fish life, other aquatic life, wild or domestic animals or fowls or to be injurious to the public health.

R.S. 56:1435: (The commission may make and promulgate such rules and conduct such investigations as it deems necessary to carry out the provision of this Part.)

R.S. 56:1439: The commission:

(1) Shall establish pollution standards for waters of state...

(2) May determine the volume of water flowing in any stream, and the high and low water marks affected by the waste disposal of any person;

(3) May regulate or restrain the discharge of any waste material into any water of the state . . .

R.S. 56:1442: (Any person who feels himself aggrieved by the restrictions of the commission may, after filing a petition with the commission, be entitled to a hearing of the matter involved. The final decision of the commission is conclusive, but may be reviewed de novo in the district court in East Baton Rouge Parish.)

R.S. 56:1451: No person shall knowingly and willfully empty or drain...from any pump, reservoir, well, or oil field into any natural stream of the state any oil, salt water, noxious or poisonous gases, in quantities sufficient to destroy the fish therein.

R.S. 40:11: The Board of Public Health and Safety has exclusive jurisdiction, control, and authority over maritime quarantine, water supplies and waste disposal within the state ...

(The Board is authorized to prepare a sanitary code for the state containing rules, regulations and ordinances for the improvement and amelioration of the hygenic and sanitary conditions of the state. The code shall provide specially for the supervision of water supplies and disposal of waste.)

R.S. 40:12: (Provides penalties for violations of the sanitary code.)

R.S. 56:322: In order to prevent the pollution of any waters of the state ... or the modification of natural conditions in any way detrimental to the interests of the state, no person shall discharge or permit to be discharged ... directly or indirectly into the waters of the states, any substance which ... in any way adversely affects the interests of the state.

Sec. 214 Canals

(Louisiana Civil Code)

Art. 505: The ownership of the soil carries with it the ownership of all that is directly above and under it.

The owner may make upon it all the plantations, and erect all the buildings which he thinks proper, under the exceptions established in the title: Of Servitudes:

He may construct below the soil all manner of works, digging as deep as he deems convenient, and draw from them all the benefits which may accrue under such modifications as may result from the laws and regulations concerning mines and the laws and regulations of the police.

(Louisiana Revised Statutes)

The following revised statutes provide for the right of corporations to expropriate property, construct and use canals for irrigation purposes, transportion of freight and passengers and development of hydroelectric power for lawful uses and purposes.

R.S. 45:61: (Corporations formed for the purpose of constructing and operating canals for irrigation by gravity have the power to acquire all land needed and if necessary to expropriate such property for rights of way and for reservoirs. This power of expropriation shall not be exercised within any township or section occupied by any canal in actual use, without the consent of the owners of such canal. Such power is to be exercised in the manner now provided for by the general expropriation laws of the state.)

R.S. 45:62: Corporations, operating under R.S. 45:61, have the right to utilize waters of navigable streams and other waters of the state for irrigation purposes, under regulations which the Department of Public Works shall prescribe, for the purpose of preventing unnecessary injury to private or public property.

Cf. R.S. 9:1101, which states that no charge shall ever be levied on the agricultural use of state waters.

R.S. 45:63: (Corporations asserting the privileges of the two statutues above are deemed public service corporations.)

R.S. 45:64: Domestic corporations, except those provided for in R.S. 45:61, organized with power of building, constructing and operating canals for irrigation, for the transportation of freight and passengers, and for the development of hydro-electric power for lawful uses and purposes, have the right to expropriate rights of way for these canals, and for telegraph, telephone, and hydro-electric lines, incident to the conduction, operation and maintenance of these canals, and lands for reservoirs,

dam sites, and dykes, forming a part of the irrigation canal and hydro-electric system.

R.S. 45:65: The right of expropriation by the corporation discussed in R.S. 45:64 shall be exercised in the same manner, by the same proceedings, and under the same limitations now imposed by law on railroads and other quasi-public corporations; except through those townships, sections, or properties that are now occupied by irrigation canals.

R.S. 45:66: Corporations, described in R.S. 45:64 shall have a right of way not exceeding six hundred feet wide for the building and construction ... of canals, lateral ditches and conduits, under, over, and across all public lands and not exceeding fifty feet for hydro-electric lines.

R.S. 45:67: (The right to construct works by corporations described in R.S. 45:65 across all streams and water shall not impede or interfere with navigation, drainage, or the natural servitude of the lands on which the rights of way may be exercised. )

R.S. 45:68: (The corporations described in R.S. 45:64 have the right to build and maintain their works across all public rural highways and roads, with the consent of the local authorities having jurisdiction upon such terms as the authorities may impose.)

R.S. 45:69 (The corporations described in R.S. 45:64 have the right to build and maintain, along the route of their works, telephone

and telegraph lines, and to erect poles for the transmission of electric power for all uses incident to and connected with the operations and purposes of these works.)

R.S. 45:70: No corporation, operating under R.S. 45:64, shall exercise any right of expropriation or be considered as a public utility until it has filed with the Secretary of State a resolution of its board of directors --- agreeing that the corporation shall be a public utility for the distribution of water for irrigation, for the transportation of freight and passengers, and for furnishing hydro-electric power and electricity, or either of them.

R.S. 34:361: The constructing, deepening, widening, improving and maintaining of navigation canals ... existing streams, lakes, or other water courses for navigation purposes, and the acquiring of property for such purposes .. no part of which shall be more than one-half mile from the center of (the water courses) are declared to be works of public improvement, the title to which shall vest in the public and for public purposes.

R.S. 34:362: (The municipalities and the parishes are authorized to acquire property for any of the works enumerated in R.S. 34:361 either by purchase, donation or expropriation and may contract for these works necessary to carry out this grant.)

Sec. 3 Use of Banks of Watercourses

(Louisiana Civil Code)

Art. 455: The use of the banks of navigable rivers or streams is public; accordingly, every one has a right freely to bring his vessels to land there, to make fast the same to the trees which are there planted, to unload his vessels, to deposit his goods, to dry his nets, and the like.

Nevertheless the ownership of the river banks belongs to those who possess the adjacent lands.

Sec. 4. Alluvion and Dereliction

(Louisiana Civil Code)

Articles 509-518 are merely mentioned to make the picture complete. They are not considered important enough to warrant reproduction here.

Sec. 5. Ground Water

(Louisiana Civil Code)

Art. 505: The ownership of the soil carries with it the ownership of all that is directly above and under it.

The owner may make upon it all the plantations, and erect all the buildings which he thinks proper, under the exceptions established in the title: Of Servitudes:

He may construct below the soil all manner of works, digging as deep as he deems convenient, and draw from them all the benefits which may accrue, under such modifications as may result from the laws and regulations concerning mines and the laws and regulations of the police.

RIGHTS AND POWERS OF STATE AND LOCAL AGENCIES OR ORGANIZATIONS

Sec. 6. State Department of Public Works

(Louisiana Revised Statutes)

R.S. 38:2: The functions of the Department of Public Works shall comprise all of the administrative functions of the state in relation to the planning, design, survey and construction, operation, maintenance and reapir of public buildings used in connection with the operation of the department, and levees, canals, dams, locks, spillways, reservoirs, drainage systems, irrigation systems, landing fields and other aeronautical facilities .....inland navigation projects, flood control and river improvement programs....The department shall render all engineering, economic and other advisory services within the scope of its functions to port terminal districts and other local government subdivisions and special districts which its facilities allow, subject to the right to be reimbursed for reasonable costs.

Comment: A person desiring to divert water for irrigation purposes by pumping from the Houston River, which is navigable, would not need the permission of the Louisiana Flood Control and Water Conservation Commission, but would need the permission of the State Board of Engineers. Op. Atty. Gen. 1936-1938, p. 582.

R.S. 38:3: The Department of Public Works shall plan systems of inland waterways, navigation, drainage; irrigation and water conservation

projects ... and initiate, sponsor, and carry through to completion all waterway projects which will further develop and expand the water resources of Louisiana, whether projects are under the Flood Control Act or any other federal agency ...

R.S. 38:4: (The Department of Public Works may, on its own initiative and at its own expense with any money from the state, drain and reclaim the marsh, swamp and overflow lands in the state, with the view of controlling floods and causing settlement and cultivation of the lands.)

R.S. 38.6: (The co-operation with a drainage district is upon any terms and conditions prescribed by the Department of Public Works.)

Sec. 7. Department of Conservation

(Louisiana Revised Statutes)

R.S. 30:1: (All natural resources of the state not within the jurisdiction of other state departments or agencies are within the jurisdiction of the State Department of Conservation.)

R.S. 30:4: (The commissioner has authority to make, after notice and hearing, any reasonable rules, regulations, and orders that are necessary: (1) To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the intrusion of water into oil or gas strata; to prevent the pollution of fresh water supplies by oil, gas, or salt water; and to require reasonable bond with security

for the performance of the duty to plug each dry or abandoned well. (4) To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities, and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool. (10) To regulate secondary recovery methods, including the introduction of gas, air, water, or other substance into producing formations.)

R.S. 30:22: (Prior to the use of any underground reservoir for the storage of natural gas the commissioner, after public hearing shall have found: (2) That the use of the underground reservoir for the storage of natural gas will not contaminate other formations containing fresh water, oil, gas or other commercial deposits.)

Sec. 8. Municipal Corporations

(Louisiana Revised Statutes)

R.S. 33:361: The municipal corporation shall have the power (2) To purchase, accept, receive by donation or otherwise, hold and sell or otherwise dispose of movables and immovables within or without the corporate limits, for parks, cemetaries ... waterworks .... and for all other municipal purposes.

(3) To make all contracts and to do all other acts in relation to its property and concerns necessary to the exercise of its corporate powers.

R.S. 33:401: (The mayor and board of aldermen of every municipality shall have the power:

( (12) to grant to any person the use of the streets, alleys, and public grounds for the purpose of laying gas, water, sewer, or steam pipes to be used in furnishing or supplying the municipality and inhabitants or any person or corporation, with gas and water. This right of use, no matter what character it takes, shall not be granted for longer than twenty-five years, and the right of use shall not be exclusive. If approval of the proposed grant is required by law, it shall be approved by a majority of the property taxpayers in the municipality.

( (20) to exercise the right of eminent domain for the purpose of perfecting its drainage system, and may exercise the right without as well as within its limits.

( (23) to erect, purchase, maintain, operate, and regulate waterworks; to lease the same to any person; to prescribe the rate at which water is to be supplied; to acquire by purchase, donation, or condemnation in the name of the municipality, suitable grounds within or without the corporate limits, upon which to erect water works, the right of ways to and from such works, and also the right of way for laying water pipes within the corporate limits, and from such water works to the municipality, and to extend such rights from time to time; or to contract with any person for the erection and maintenance of water works, fixing water rates in the contract subject to municipal regulation. But such a contract shall not be entered into for a longer term than twenty-five years

nor until submitted to the vote of the qualified electors, and approved by a majority of them.

( (24) To establish and change the channel of streams and water courses whenever to do so will promote the health, comfort, and conveniences of the inhabitants.

( (25) To control, guide, or deflect the current of a river, with the approval of the State Department of Public Works.)

R.S. 33:404: (The mayor shall have the jurisdiction vested in him by ordinance over all places within five miles of the corporate limits for the enforcement of any cemetary or waterworks ordinance and regulation thereof.)

R.S. 33:841: Property within the corporate limits of the city may be expropriated for any public or municipal purpose, and to the full extent of the authority granted by the constitution of the state ... By such expropriation the city may acquire perfect ownership or any less interest, servitude, or use. Expropriation of property located outside the limits of the city shall be made according to the requirements of, and as provided by general law.

R.S. 33:842-845: (Give procedure for expropriation of property.)

Sec. 9. Police Juries

(Louisiana Revised Statutes)

R.S. 33:1236: The police juries shall have the following powers:

(2) To regulate the proportion and direction, the making and repairing of the roads, bridges, causeways, dikes, dams, levees, and highways.

(3) To regulate the clearing of the banks of rivers and natural drains .. for the purpose of securing a free passage for boats and other water craft ... or the towing of logs or timber ... to build dams to prevent the encroachment of salt water from the Gulf of Mexico or any bays, inlets, or streams connected therewith, into fresh water streams, when such salt water shall be found injurious to property.

(12) To cause to be opened in any town or suburb ... such ancient natural drains as have been obstructed by the owners of the adjacent lands ... to cause any water course which is not navigable to be filled up for the purpose of carrying the public highways over the same; provided no injury thereby be caused to the neighboring inhabitants; and whenever an application is made by more than twelve inhabitants ... and it is found necessary to dig one or more common draining ditches, the juries may order such to be done at the expense of the inhabitants ... (provided that persons aggrieved have the right of complaining of such works.)

(13) To construct and maintain drainage ditches and drainage canals to acquire lands for necessary public purposes, including rights of way, canals and ditches by expropriation, purchase, prescription or by donation; to enter into contracts for the construction of such works, and

to purchase machinery; to allocate, use and expend the general alimony of the parish; to incur debt and issue bonds for the construction of such works; and to tax for maintenance of such works; to enter into contracts under such terms and conditions as may be mutually agreeable with the State, through the Department of Public Works for the securing of State aid for the purposes herein authorized; to cooperate and participate in any State or Federal aid program.

(26) The police juries are given the right to expropriate property in order to facilitate the construction, maintenance and operation of canals.)

R.S. 33:1237: A police jury may close and dam, on its own initiative, small canals or streams of water in the parish which it finds hazardous or detrimental ... destructive or harmful to property or to the public health and which are not under the jurisdiction of the United States, when it has the written approval of the Department of Public Works; and if within a levee district, the written approval of the board of commissioners of the levee district.

R.S. 33:1238: (Provides procedure to be followed in R.S. 33:1237.)

Sec. 10. Water Works District

(Louisiana Revised Statutes)

R.S. 33:3811: (Police juries may divide their respective parishes into one or more waterworks districts. The police jury may abolish a

waterworks district or may change its boundaries; provided that obligations existing at the time of such abolishment or change shall not be affected. Before the abolishment or change, the police jury shall adopt a preliminary resolution declaring the intention of the police jury. Notice of a hearing shall be given to the public and a hearing shall be held.)

R.S. 33:3814: Police juries shall form a waterworks district when petitioned to do so in writing by not less than twenty-five persons owning and assessed for lands in the district. Corporations may sign the petition only if domiciled in the district. The petition shall set forth the boundaries of the district and the names of persons to be appointed as commissioners of the district.

R.S. 33:3815: (The waterworks district shall constitute a body corporate in law, with all the powers of a corporation. The water works district may expropriate property for any purpose it deems necessary in the operation of its waterworks system, and may acquire by donation; purchase, or expropriation any existing waterworks system in the district. The districts may dig and excavate the roads, streets, sidewalks, and alleys in the district for the purpose of laying pipeline or water mains. It may acquire all machinery necessary and shall own all sites, acquired by the above methods, in full ownership.)

Waterworks districts may co-operate with other waterworks districts within their respective parishes, or with private individuals, associations,

corporations, or municipalities.

R.S. 33:3818: (The board of commissioners of the district shall have absolute control and authority over the waterworks in the district. The Board shall adopt by-laws, rules and regulations, for the proper conduct and operation of the district. They may employ the necessary labor for directing and installing a waterworks system.

(They may enter into contracts to improve the water system.)

R.S. 33:3820: (The Commissioners of a district may fix the rates at which it will supply water within as well as outside the district and may dispense water from its system upon a flat rate or upon a meter rate. The cost of connecting and installing meters shall be borne entirely by the person using them.)

R.S. 33:3822: The governing authority of any parish, municipality or waterworks district ... is hereby vested with full power and authority, after having been petitioned by sixty per cent of the resident property owners of any such political subdivision, or by a vote of a majority in number and amount of the resident property taxpayers qualified to vote ... in the discretion of the governing authority, to establish, acquire, construct, improve, extend and maintain within the political subdivision a waterworks system or systems, including such treatment facilities as may be required, with all necessary equipment and installations in connection therewith, including such extensions as may be proper to connect the system or systems with the main waterworks system of said political subdivision ... whether within or without any such political subdivision;

or, if the area which is to be served be an area within a parish, municipality or waterworks district already having water facilities or which may be able to acquire such facilities within or without such political subdivision, then by petition of the property owners in such area owning property comprising not less than sixty per cent of the frontage of all lots ... to be improved or benefited by the laying of such water lines or the installation of such improvements, or by vote of the qualified resident property taxpayers within such area, and they shall have full power and authority to levy and collect local or special assessments on the real property within ... the area so served, sufficient in amount to defray the total cost of said work, including the cost of street intersections and installations and connections necessary to connect said system with the main water system of the political subdivision or necessary to connect said system with any facilities outside of such political subdivision, including the cost of acquiring any such outside facilities whether by purchase, lease or otherwise, or including the cost of the construction of complete waterworks facilities, either within or without the political subdivision, all within the form and manner and subject to the limitations and restrictions herein contained.

R.S. 33:3823: (Requires the giving of detailed notice of intention by the political subdivision to establish, acquire, construct, improve, extend and maintain a water system. All objections are then to be

heard in open session on a date, time and place named. Then, if still desired, by the political subdivision the improvements may be put into effect.)

R.S. 33:3827: Upon receipt of the certified statement ... of the engineers of the political subdivision ... (giving the total cost of the improvement, plus the amount of the cost chargeable to each lot to be improved) the governing authority shall adopt an ordinance levying a local or special assessment on each lot ... to be improved or benefited in proportion that its front footage bears to all the abutting lots... to be improved ... provided that where the construction of the improvements is financed partly under the provisions hereof, and partly by the issuance of tax secured bonds, or by any other method, then the total of all assessments levied hereunder shall represent the total cost of the work contemplated less the amount provided by tax secured bonds, or such other method ... (All unpaid assessments, when filed with the clerk of court in the parish where the property is located, shall operate as a lien against all such real estate.)

R.S. 33:3828: (Provides for the issuance of negotiable interest bearing coupon certificates of the political subdivision which are not to exceed the amount of the improvement costs.)

R.S. 33:3829: (If the local and special assessments originally levied are insufficient to cover the costs of the improvements, the political subdivision is authorized to levy additional local or special assessments.)

R.S. 33:3835: No contest or proceeding to question the validity or legality of any resolutions or ordinances adopted or proceedings had under the provisions of R.S. 33:3822 through 33:3835 shall be begun in any court by any person for any cause whatsoever, after the expiration of thirty days from the date when the resolution, ordinance or proceeding was published, and after such time the regularity of such resolution, ordinance, or proceeding shall be conclusively presumed. If the validity of any certificates issued under the provisions of R.S. 33:3822 through 33:3835 is not raised within thirty days from the date of publication of the resolution or ordinance issuing said certificates and fixing their terms, the authority to issue said certificates, the legality thereof and of the local or special assessments necessary to pay the same shall be conclusively presumed and no court shall thereafter have authority to inquire into such matters.

## Sec. 11. Fresh Water Districts

(Louisiana Constitution)

Art. XV Sec. 3: The Legislature is authorized, for the purpose of furnishing fresh water from the Mississippi River to the villages, towns, and cities within its boundaries or adjacent thereto, to create, out of all part of the Parishes of Ascension, Assumption, and Lafourche, a fresh water district, to be known as Bayou Lafourche Fresh Water District, which shall be a subdivision of the State with power to sue and be sued and to have all the powers of taxation vested in other subdivision of the State ... and with further power to levy fixed charges, on a gallonage basis, for water so furnished ....

(Louisiana Acts)

Act 113 of 1950: (The affairs of said district shall be governed by a board of commissioners, to be selected by the police juries.

(The act merely enacts the provisions of Art. 15 Sec. 3 of the Louisiana Constitution which are outlined above.)

Act 191 of 1952: (This authorizes the Board of Commissioners of the Atchafalaya Basin and Lafourche Basin Levee Districts to make available the sums of $250,000 each, for the construction of a pumping facility, appurtenant pipeline and other facilities to provide fresh water in Bayou Lafourche from the Mississippi River; to authorize said Boards to contract with other agencies, departments, political subdivisions, persons, firms, or corporations for the exercise of the authority herein granted.)

Act 192 of 1952: (Act 113 of 1950 was amended in this act to require the Board of Commissioners of the district to maintain the drainage improvements, floodgates, channel improvements and drainage structures of the district, with the view of providing and maintaining fresh water therein and authorizing the Board to contribute to the cost of construction and installation of the pumping facilities.)

Act 566 of 1952: (This authorizes the Department of Public Works to construct a pumping facility and appurtenant pipeline facilities at the head of Bayou Lafourche.

Sec. 12. State Soil and Water Conservation Districts

R.S. 3:1204: (A. The State Soil and Water Conservation Committee, consisting of seven members, is an agency of the State. The Dean of the College of Agriculture of Louisiana State University and the Commissioner of Agriculture of the State of Louisiana shall automatically be members of this committee. The other five members shall be elected, one from each of five designated areas within the state. Each elected member shall be a landowner or operator actively engaged in farming or animal husbandry, within the district and area he represents, and shall be a qualified voter in that district.

(D. The Committee shall have the following duties and powers:

(1. To offer appropriate assistance to the supervisors of the soil and water conservation districts.

(2. To inform each district of the activities of the other districts.

(3. To coordinate the programs of the districts.

(4. To secure the cooperation or technical and financial assistance of the United States or the State.

(5. To encourage the formation of districts in areas where needed.

6. The State Soil and Water Conservation Committee and the Soil and Water Conservation Districts shall be the official state agencies for cooperating with the Soil Conservation Service of the United States Department of Agriculture, and for promul-

gating and enforcing land-use regulations or adjustments in carrying on all measures for the control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water.

E. Nothing contained in this Part shall have the effect of taking away or abridging any of the functions presently being exercised under existing law by the Department of Public Works, State of Louisiana ....

R.S. 3:1205: A. Any twenty-five owners of land lying within the limits of the territory proposed to be organized into a district may file a petition with the State Soil and Water Conservation Committee asking that a soil and water conservation district be organized ... (The petition must set forth, among other things, that there is a need, in the interest of public health, safety, and welfare for such a district to be formed. Where more than one petition is filed covering parts of the same territory, the State Soil and Water Conservation Committee may consolidate all or any such petitions.

(B. After a hearing with all owners of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, if the committee shall determine, upon the facts presented at the hearing and upon such other relevant facts and information as may be available, that there is a need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the

territory considered at the hearing, it shall define the boundaries of the district. In defining such boundaries the committee shall give due weight and consideration to the physical, geographical and economic factors as are relevant, keeping in mind that the purpose is to conserve soil resources, control and prevent soil erosion, prevent floodwater and sediment damages, and further to dispose of, or develop, conserve and utilize water. The territory to be included within such boundaries need not be contiguous. If the petition is denied, after six months, subsequent petitions covering the same or substantially the same territory may be filed again, new hearings held and determinations made.

(C. After the committee has made a determination that there is a need for the establishment of the district, it shall consider the question whether the operation of a district within such boundaries, with the powers conferred upon the districts by this Part is administratively practicable and feasible. To assist the committee in answering this question, it shall hold a referendum within the proposed district upon the proposition of the creation of the district. Only owners of land within such boundaries shall be eligible to vote on the referendum.

(E. The committee, considering the relevant facts which are suggested in this Part, may determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible only if a majority of the votes cast in the referendum upon the proposition of the creation of the district shall have been in favor of the creation of the district.)

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R.S. 3:1208: (A soil and water conservation district shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers. The district shall have the following powers:

(1. To carry out preventive and control measures and works of improvement for flood prevention or the conservation, development, utilization and disposal of water within the district on lands owned or controlled by the state and on other lands within the district upon obtaining the consent of the owner as well as occupants of such lands;)

2. To cooperate, or enter into agreements ... to furnish financial or other aid to, any agency, governmental or otherwise, or any owner of lands within the district, in the carrying on of erosion control and prevention operations and works of improvement for flood prevention or the conservation, development, utilization, and disposal of water within the district ...

(3. To acquire in any manner, maintain, administer and dispose of property in furtherance of the purposes of this Part;

(4. To make available to land occupants machinery, fertilizer, seeds and other material or equipment in furtherance of the purposes of this Part;

(6. To develop comprehensive plans in order to accomplish the purposes of this Part;

7. To take over by purchase, lease, or otherwise, and to administer and manage any soil-conservation, flood prevention, drainage, irrigation, water management and erosion-control projects located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies ...

(8. To sue and be sued; to make and execute contracts and other instruments necessary in the exercise of its powers; to make, amend, and repeal rules and regulations not inconsistent with this Part to carry into effect its purposes and powers;

(9. In order to receive any benefits under this Part, the landowner may be required to contribute money, services or materials to the operations conferring such benefit.)

10. No provision with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

11. No district organized under the provisions of this Part shall have power to levy, assess, or collect any taxes or special assessments.

R.S. 3:1209: The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion ...

R.S. 3:1215: (Gives the procedure for the discontinuance of a district which is very similar to the procedure used in the creation of a district.)

Sec. 13. Iatt Lake Water Conservation District

(Louisiana Constitution)

Art. 15 Sec. 4: Iatt Lake Water Conservation District shall be a body politic and corporate and political subdivision of Louisiana. The District shall include all the land within Grant Parish located west of U. S. Highway 167 and all the land located within Police Jury Wards 9 and 10 of Rapides Parish, exclusive of that land located within existing municipalities and waterworks districts.

(C. The purpose of the District is to furnish fresh water to cities, towns, villages, industries, corporations and persons both within and outside of the District; to preserve, store, control, conserve, utilize and distribute the waters of the lakes, streams and other bodies of water in the District; to prevent the pollution and blocking of such streams; to acquire, maintain and operate facilities, including the construction of new ditches, channels, dams and levees, and all other work necessary to the drainage of lands in the District; to prevent the escape of such waters until employed to maximum public advantage and in insuring a fair and just distribution of all of said waters for all of the people of the area for the purposes shown.

(E. As the exercise of the powers will be in all respects for the benefit of the people of the State, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, the Board shall not be required to pay any taxes or assessments upon any property acquired or used by it.

(F. The powers granted to the District include the following:

(1. To sue and be sued.

(3. To acquire by purchase, donation, lease, or otherwise any property necessary for carrying out the objects of the District;

(4. To expropriate property and to exercise the power of eminent domain;

(5. To effectuate and maintain proper depths of water to accommodate the business of the District, and to adopt and enforce such regulations as may be reasonably necessary to control the pollution and blocking of streams and other fresh water bodies within the District;

(6. To construct, acquire, and maintain pumping stations, pumps and facilities, reservoirs, dams, levees, canals, locks, conduits, pipes, water treatment plants, and such other works as are necessary for carrying out the purposes of this amendment. There is hereby vested in the District the right to transfer water between watershed in the District, to control the water level in and discharge rates from the District's reservoirs and the lakes, streams and other bodies of water in the District and to

take and dispose of all natural water flowing into or originating within the District for all purposes of this amendment; provided only, that the District shall not have authority to destroy or substantially diminish vested water rights without the making of proper compensation therefor; also, no adverse conditions shall be created by the construction of any dam or reservoir;

(7. The District may impound, treat and distribute to consumers all the water which may be made available by reason of its facilities and may make appropriate charges therefor provided only that no charges or fees shall be imposed which shall have the effect of materially impairing any water rights presently vested in the owners of property in the District;

(8. to adopt rules governing the fixing of charges for water and services and enter into contracts, operative within or without the District, with any consumer of water or water service and to enter into such contracts as it may see fit looking to the acquisition, construction, maintenance and operation of properties for carrying out any of its corporate powers;

(9. to incur non-funded debt not to exceed in the aggregate the net of the unpledged estimated revenue for the current year;)

(P. This amendment is self-sufficient and self-executing without any supplementary action on the part of the Legislature. The Legislature is nevertheless authorized to further develop this amendment.)

Sec. 14. Bayou D'Arbonne Lake Watershed District

(Louisiana Revised Statutes)

R.S. 38:2552: (The Bayou D'Arbonne Lake Watershed District shall be a political subdivision and budgetary unit of the State of Louisiana. The purpose of this district is the conservation of soil and water and the development of natural resources and wealth of the district for sanitary, agricultural and recreational purposes.)

R.S. 38:2553: (The district shall have all the powers of a corporation. It may incur debt and issue negotiable bonds, contract, exercise the power of eminent domain and expropriation, conserve the fresh water supply within its boundaries, provide water for commercial, municipal and any other uses, both within and without the district and own property interests in full ownership.)

R.S. 38:2554: (The Board of Commissioners shall aid and assist the Department of Public Works in building such dams and other works as may be necessary to carry out the purposes of the district and to create and impound an industrial water supply.)

R.S . 38:2558: (The Board of Commissioners may:

(1) Purchase and sell personal and real property;

(2) Acquire servitudes, rights of way and flowage rights by purchase or expropriation;

(3) Assist in conserving soil and water;

(4) Contract for construction of works;

(5) Cooperate with the Department of Public Works in its construction of any drainage works and constructions of works for the control, retention, diversion or utilization of water;

(7) Levy taxes and incur indebtedness;

(10) Do and perform any and all things necessary to the fulfillment of the purposes for which this district is created;

(11) (c) Secure the general health of the district;

(e) Grant franchises for the purpose of laying gas, water, sewer or other facilities supplying inhabitants or corporation with water.)

R.S. 38:2559: (The Board may make and enforce such rules and regulations as it shall deem necessary:

(1) To protect the works:

(4) To prescribe the permissible uses of the water supply, provided by the impoundment constructed.)

Comment: The Department of Public Works is given similar powers in order to aid the district in accomplishing its purposes. The Department of Public Works and the Wild Life and Fisheries Commission are given supervisory control over the board of commissioners.

## Sec. 15. Recreation and Water Conservation Districts

There are four recreation and water conservation districts now in existence: (1) Recreation and Water Conservation District, St. Helena Parish; (2) Cypress-Black Bayou Recreation and Water Conservation District; (3) Black Lake Bayou Recreation and Water Conservation

District of Red River Parish; and (4) Bayou Desiard-Bayou Bartholomew Cut-Off Loop Water Conservation Board. Each has purposes and powers very similar to those of the Cypress-Black Bayou Recreation and Water Conservation District, which are set out below in R.S. 38:2603 and R.S. 38:2608.

(Louisiana Revised Statutes)

R.S. 38:2603: (The Cypress-Black Bayou Recreation and Water Conservation District shall be a political subdivision of the State which shall have for its purposes the development of the wealth and natural resources by the conservation of soil and water for agricultural, recreational, commercial, industrial, and sanitary purposes. It shall have complete control over the supply of fresh water made available by its facilities which shall be administered for the benefit of the persons residing or owning property within the district and if it should be for the benefit of the district, it shall have the authority to sell such water for irrigation, municipal and industrial uses both within and outside the district. This statute gives the district the necessary powers to carry out the purposes for which it was created.)

R.S. 38:2608: (The board of commissioners may make such rules and regulations as it shall deem advisable to:

(1) Protect and preserve the works of the district ... and to prescribe the manner of their use;

(2) Prescribe the manner of buildings, bridges, roads, fences or other

works in, along or across any channel, reservoir or other construction of the district;

(3) Prescribe the manner in which ditches, sewers, pipelines or other works shall be connected with the facilities of the district or any water course within the district and the manner in which the water courses of the district may be used for the disposal of waste;

(4) Prescribe the permissible uses of the waters of the district made available by its facilities and to prevent the pollution of such water;

(5) Prohibit or regulate the discharge by sewers into the district of any waste ... deemed detrimental to the waters or facilities of the district.

Sec. 16. Sabine River Authority

R. S. 38:2322: (The governing power of the Sabine River Authority shall be vested in a board of commissioners composed of twelve members, eleven appointed for four years by the governor, the twelfth being the Director of Public Works.)

R.S. 38:2324: (The Sabine River Authority is an agency and instrumentality of the State with corporate powers, possessing all privileges, rights and immunities conferred by law upon other corporations of like character within the state, but without power to levy taxes. The Authority will be performing an essential public function under the constitution and shall not be required to pay any tax or assessment on its

properties, any excise, license or other tax on its operating revenues, nor will there be any tax on the income derived from bonds issued.)

R.S. 38:2325: (The Authority shall have the power:

(2. To acquire, encumber and dispose of real or personal property within its territorial jurisdiction, whether or not subject to any mortgage or lien.

(3. To contract in carrying out corporate objectives.

(5. To incur debts which shall be payable only from the revenues to be derived by the Authority from sources other than taxation.

(6. To fix, collect and revise rates, charges and rentals for the facilities of the Authority and the services rendered.

(10. To conserve, store, control, preserve, utilize and distribute the waters of the rivers and streams of the Sabine watershed; to drain and reclaim swamp and overflow lands in the district, with the view of controlling floods and causing cultivation of such lands; to control and employ the waters of the Sabine River and its tributaries.

(b) To provide for the preservation of the equitable rights of the people in the beneficial use of the waters of theSabine River and its tributaries.

(c) To obtain the maximum service from the waters of the Sabine River and its tributaries;

(e) For irrigation of Louisiana lands;

(f) For the development of drainage systems;

(h) For the development of commercial and industrial enterprises;

(i) For the development of hydro-electric power.)

Sec. 17. Irrigation Districts

(Louisiana Revised Statutes)

R.S. 38:2101: (The Police Juries of the different parishes of the state may form an irrigation district comprised of lands in one or more parishes or comprising any portion or portions of one or more parishes.)

R.S. 38:2102: (The irrigation districts shall be created by the police juries when petitioned to do so by the property owners owning a majority of the land within the limits of the proposed district, outside the limits of any towns or cities.)

R.S. 38:2104: (Any interested person must contest the legality of the district in the district court of the domicile of the district within sixty days from the date of the second publication, or of the date of the last posting of the ordinance creating the district.)

R.S. 38:2112: (All irrigation districts shall constitute a body corporate in law, with all the powers of a corporation. They may incur debt, issue negotiable bonds and expropriate property.

(All districts may conserve water for the benefit of the inhabitants and property owners within the district, to provide water for irrigation and other uses, both within and without the district. The governing authority may do and perform all acts necessary to construct, lease, acquire, maintain and operate dikes, dams, reservoirs, storage basins, locks, levees, flumes, conduits, and acquire or lease any private canals

amd other bodies of water within or without the district and necessary or suitable to the operation of the district.

(The districts may construct, lease, maintain, acquire and operate any machinery necessary. They may own in full ownership all servitudes, rights of way, and other sites, no matter how acquired. They may transfer title to the Federal Government of any property they may own.

(The districts may enter into any agreements necessary with the Federal Government for carrying out the purposes of the district.

(They may acquire water from any other irrigation system, or from any other source, and distribute the water, and make a uniform rate for its use. The charge shall be in addition to any tax that may be levied to pay the principal and interest on any bonds issued. No part of the money from the bonds shall be used to pay for the water so purchased but must be used to construct the irrigation systems.)

R.S. 38:2113: (Any and all contracts may be let without advertising to accomplish the goals of the district.)

R.S. 38:2116: (When petitioned by landowners owning a majority of the acres within a district, a tax not exceeding ten cents per acre for a period not exceeding forty years shall be levied on each acre within the district.)

R.S. 38:2117: Lands within the corporate limits of incorporated towns and cities, although within the limits of an irrigation district, shall not be liable to taxation for any purpose under this Part, nor shall these lands be considered in calculating the number of proportion of acres of land required to sign any petition or make any recommendation under this Part. The owners of the lands shall not, by reason of the ownership,

sign any petition or participate in any election required or permitted under this Part.

R.S. 38:2120: Whenever landowners, owning not less than twenty-five per cent of the total acreage of the land in an irrigation district outside of the corporate limits of incorporated towns and cities, shall petition the governing authority of the district to call an election to submit to the property taxpayers therein qualified to vote, a proposition to authorize the incurring of debt and issuing of bonds for the purpose of acquiring, constructing, leasing, maintaining, and operating canals, locks, dams, reservoirs, storage basins, dikes, ditches, levees, flumes, machinery, and other works, or for the purchasing of works already constructed, in the district, the governing authority of the district shall call a special election for the purpose of obtaining the will of the property taxpayers qualified to vote in the district, in regard to the proposition to incur debt and issue bonds, as petitioned for as aforesaid.

Sec. 18. Drainage District

(Louisiana Revised Statutes)

R.S. 38:111: (Any drainage or subdrainage district, gravity drainage district, levee board, or political subdivision may contact with the Department of Public Works upon any terms for the payment of the cost of the different projects involved proportionately by the Department of Public Works and the districts.)

R.S. 38:113: (The districts shall have control over all public drainage channels within the limits of their districts and for a space of one hundred feet on each side of the channel whenever the channels, improved or unimproved, have been adopted as necessary parts of or extension to adopted channels.)

R.S. 38:141: (The Louisiana parishes, Orleans excepted, may expropriate land and improvements, outside the levee districts, necessary for the construction of drainage canals and projects with enough adjoining property on which to build spoil banks and on which to place the removed dirt, and property next to or in the vicinity of the projects necessary for construction and maintenance.

(The parishes may acquire clear title to the land and improvements or any servitude, right, or interest necessary.)

R.S. 38:214, 215: (State that no person may interfere with or obstruct the drainage and set fines for violations.)

R.S. 38:217: (Drainage of water into a public road is prohibited.)

R.S. 38:218: No person diverting or impeding the course of water from a natural drain shall fail to return the water to its natural course before it leaves his estate without any undue retardation of the flow of water outside of his enclosure thereby injuring an adjacent estate.

(Provides fine for violation.)

R.S. 38:1521: (The board of commissioners of drainage districts may borrow the sums which in their judgment may be required for the

needs of the district for the current year, upon terms they may see fit, not exceeding the rate of six per cent per annum, and secure the loans by a pledge of the revenues of the district for the current year. In arriving at the amount to be borrowed, the district may anticipate the current revenues of each year.)

R.S. 38:1543: (The board, so long as any of the bonds are outstanding shall assess an acreage tax or forced contribution against each acre of land in the district or each acre of land specified in the petition of the property owners, not to exceed two dollars and fifty cents per acre per annum.)

R.S. 38:1545: (Provides for the funding or refunding of bonds and sets out the procedure for such.)

R.S. 38:1571: (A district wholly within the boundaries of any municipality may be dissolved, and all the canals, works and property of the district, and the control thereof, may be transferred to the municipality, all by resolution of the board of commissioners of the district.

R.S. 38:1574: (Any district, when requested by written petition, signed by the landowners owning 95 per cent of the lands in the district, shall, through its governing authority, adopt a resolution declaring the district to be dissolved.)

R.S. 38:1575: (There may be no dissolution without the consent of all bondholders or the retirement of all outstanding bonds.)

R.S. 38:1602: (For the purpose of draining and reclaiming the

marsh, swamp, and overflowed lands in Louisiana that must be pumped and leveed in order to be reclaimed the various parishes on their own initiative, may create drainage districts embracing all or part of the land in their parishes. All land in any district must be contiguous. There must be no less than five landowners, resident or non-resident, and no land shall be included within more than one drainage district.)

R.S. 38:1603: (Drainage Districts may be composed of contiguous lands situated partly in one parish and partly in one or more adjoining parishes when approved by the respective governing authorities of the parishes.)

R.S. 38:1604: Upon the failure or refusal of any parish to create drainage districts when used ... then the parishes shall create a drainage district when petitioned to do so by the property owners owning a majority of the acres in the proposed district ...

R.S. 38:1605: No drainage district shall be created until the Department of Public Works shall have first approved the formation of the district with respect to the body of land to be included therein .... If in the opinion of the Department it is necessary to include in the district any high lands for the purpose of reclaiming the body of unreclaimed lands, the inclusion shall not invalidate the creation of the district ... but the high lands shall be taxed only in the proportion, if any, as they shall be benefited by the works of the district ...

R.S. 38:1614: (Any drainage district shall constitute a body coporate in law, with all the powers of a corporation. It shall have perpetual existence, incur debts and contract obligations, sue and be sued and perform all acts in its corporate capacity necessary for carrying out the purposes and objects for which it was created.

(The district may expropriate property for pumping station sites or for any other purpose. It may acquire machinery needed and maintain pumping plants and shall own the right of way for levees, canals and ditches, and all sites which are acquired either by donation, purchase or expropriation, in full ownership.

(The drainage districts may contract with the other various types of drainage districts, and municipal corporations to undertake projects as a joint enterprise. The works shall be owned by the different districts or municipal corporations in proportion to the contribution by such, which will be figured in advance of the work.

(A district may open, deepen and enlarge natural drains within or without the district which may be deemed necessary. It may cut and open new drains and canals wherever deemed necessary and may enter into contracts for the performance of this work.

(A district may extend canals and ditches beyond its limits for the purpose of securing a proper outlet for the waters of the district.)

R.S. 38:1617: (Any interested person may contest the legality of any drainage district by suit against the district brought in the district court of the domicile of the district within sixty days from the date of the second publication or the date of the last posting of the ordinance creating the district. The right to bring this suit lapses after this sixty day period and no court shall have jurisdiction to entertain any suit afterwards.)

R.S. 38:1619: (Immediately after organizing, the board of commissioners shall levy the assessment and collection of a uniform acreage tax of not more than twenty-five cents per acre upon each acre of land within the limits of the district for the purpose of meeting organizing expenses and operating expenses such as making surveys of the district and assessing benefits and damages. It is necessary to incur these expenses before the board of commissioners shall be empowered to provide funds to pay the total cost of works of the district. The tax shall operate as a regular tax lien upon the property.

(If the amount received from the tax exceeds the needed amount, the surplus shall be prorated and refunded to the landowners paying the uniform tax.

(Any land within the district not benefited by the plan for reclamation will not be subject to this acreage tax.

R.S. 38:1621: (A competent civil engineer, appointed by the Board of Commissioners, shall have control of the engineering work in the district. The engineer shall submit a plan for reclamation.)

R.S. 38:1622: (Upon the adoption and filing of the plan for reclamation, the owners of a majority in acres of land within the district, if they desire to proceed with the work of reclaiming the lands, may present a petition to that effect to the board of commissioners. When so petitioned, the board shall proceed with the reclamation of the district, the incurring of debt, the issuance of bonds, and the levy, assessment, and collection of taxes.)

R.S. 38:1623-1628: (Provide for the selection of a board of appraisers, their reports and the procedure for the expropriation of property.)

R.S. 38:1629: (If after hearing all contests and considering the report of the board of appraisers, the court shall find that the estimated costs of works exceed the estimated benefits, the court shall decree the board of commissioners unauthorized to put into effect the plan. The plan may then be amended if the landowners desire such.)

R.S. 38:1630: (After filing with the secretary of the board of commissioners a certified copy of the decree of the court, the board may proceed with the plan for reclamation, and may employ men and machinery to complete all works and improvements needed. After advertising they may, in their discretion, let the contract for the works and improvements to the lowest bidder, who shall furnish security. The chief engineer shall be the superintendent of all the works and improvements.)

R. S. 38:1631: (After the list of lands with the assessed benefits and the decree of court have been certified and sent to the secretary of the board of commissioners, then the board may levy a tax of the portion of the benefits on all lands to pay the costs of completion of the proposed works and improvements. In case bonds are issued, then the amount of the interest, plus ten per centum for emergencies, which will accrue on the bonds shall be included and added to the tax.)

R.S. 38:1633: (After the works and improvements are completed, the board may levy a maintenance tax on the land within the district.)

R.S. 38:1638: (In order to effect the drainage, protection and reclamation of the land in the district:

(A. The board of commissioners may:

(1. clean out, straighten, widen, change the course and flow, alter or deepen any ditch, drain, watercourse, pond, lake, creek, bayou or natural stream in or out of the district;

(2. fill up any creek, drain, channel, watercourse or natural stream, and

(3. concentrate, divert or divide the flow of water in or out of the district,

(4. construct and maintain main and lateral ditches, canals, levees, dikes, dams, sluices, revetments, reservoirs, holding basins, floodways, pumping stations and syphons and any other works and improvements deemed necessary to preserve the works in and out of the district.

(B. The board of commissioners shall:

(1. make adequate provision for the drainage of all lands,

(2. construct or enlarge any and all bridges needed in or out of district across any work or improvement,

(3. construct any and all of the works and improvements across, through or over any public highway, railroad right of way, track, grade, fill or cut in or out of the district,

(4. remove any fence, building, or other improvements in or out of the district, and

(5. hold, control, and acquire by donation or purchase, and if need be, expropriate any land, servitude, railroad right of way, sluice, reservoir, holding basin or franchise in or out of the district for any purpose herein provided.)

R.S. 38:1661: (Where the works set out in the plan for reclamation are found insufficient, the board of commissioners may formulate new or amended plans. The additional assessments shall be made in conformity with R.S. 38:1623 et seq.)

R.S. 38:1662: (If necessary for drainage, the constructed ditches shall be connected with the existing ditches, etc., in the district.)

R.S. 38:1751 - 1802: (Concern gravity drainage districts, which are similar to the revised statutes summarized above.)

R.S. 38:1841-1904: (Concern consolidated districts.)

There now exist the Cane River, Lafourche Basin and Red River-Bayou Pierre Levee and Drainage Districts.

(Louisiana Constitution)

Art. XV. Sec. 1 (1921): The Louisiana Legislature may enact legislation for the purpose of draining and reclaiming the undrained marsh, swamp and overflow lands in the State and may delegate the power necessary for such to an agent or agencies, as may now exist, or as may be created; to organize drainage or subdrainage districts; to impose taxes and forced contributions on land benefited by such drainage; to issue bonds, for which the credit of the State shall never be pledged, when payment is based upon such tax or forced contributions; and also to cooperate with the federal government.

Sec. 19. Levee Districts

(Louisiana Revised Statutes)

R.S. 38:281: The levee boards of this state, Orleans Parish excepted, may construct and maintain levees, levee drainage, and do all other things incidental thereto ...

R.S. 38:221: (No person shall place in, through, or under any public levee any rice-flume, dahl, pipe, or other conduit or, after due notification, shall fail to remove from the levee such works that may exist. A find of not more than five hundred dollars or imprisonment for not more than sixty days or both is provided for violation.

(This Section shall not be applicable to levees on the Mississippi River not embraced within the limits of the Fifth Louisiana, the Atchafalaya Basin, the Lafourche Basin, the Grand Prairie, the Buras, and the Orleans Levee Districts.

(This section shall not apply to pipes or other conduits placed through or under the public levees in New Orleans, or in municipalities or parishes when and where needed for the purpose of sewerage, gas, or for furnishing gas or electricity for the use of cities or parishes and their inhabitants.

(The laying of such pipes through or under the public levees in cities, municipalities, or parishes shall be with the consent and approval of the levee board, the Department of Public Works and the governing authorities of the cities, municipalities, or parishes and under the supervision of the Department of Public Works.)

R.S. 38:222: Any authority granted under the provisions of R.S. 38:221 to operate a siphon over the public levees shall be subject to the following regulations:

(1) The location of all siphons shall be at right angles to the axis of the levee.

(2) The levee shall (not be cut into nor disturbed) in placing of the siphon ... This siphon shall be made either to span the levee or in a practicable manner to conform to the prescribed section of the levee.

(3) The intake and discharge ends of all siphons shall be located at distances not less than thirty feet on the river side nor sixty feet on the land side from the base of the levee.

(4) Both the intake and discharge ends of all siphons shall be so protected as to guard against any local excavation or washout.

(5) In the operation of the siphons for irrigation or other purposes, no area within one hundred and fifty feet of the base of any public levee on the land side shall at any time be flooded.

(6) All areas subject to flooding by siphons or otherwise, shall be provided, by the owners or operators, with low level ditches, located at suitable distances apart to at all times care for the proper drainage of the public levees and highways.

(7) (No siphon shall be placed over the levees included within the provisions of R.S. 38:221 until permission has been obtained.)

Sec. 20. State Contracting Power With Federal Government

It must be realized that any use of water within the state is always sub-servient to the contracts which the Governor of the State has made with the Federal Government in relation to flood control.

(Louisiana Revised Statutes)

R.S. 38:81: The governor on behalf of the state or any state board, commission, agency, body politic or political subdivision or any section of the state may make and execute with any person who is an authorized representative of the federal government, any contract, transaction, or undertaking, designed to carry out, accomplish, or secure the benefits and obligations of any state or federal law with respect to the control of flood waters, the navigation or use of rivers flowing through this state, the development of our waterways, lowlands, drainage areas, storage basins, reservoirs, spillways, floodways, diversion channels for flood

waters and all similar undertakings. The governor shall see to it that the interests of the state and its subdivisions, the rights and interests of its citizens and their property are adequately protected.

The governor may utilize whatever power he is given by law to function the various levee boards, the Department of Public Works, or any other state board, commission, agency, or political subdivision. These authorities shall fully cooperate and coordinate their efforts under his direction in carrying out and accomplishing the obligations and requirements of the agreements and undertakings.

R.S. 38:83: The governor may enter into any other contract with ...the United States Government, which may become necessary to make effective in Louisiana and provisions of the Flood Control Act and to secure for the State the aid and relief provided for in the Act. To this end the Governor may perform any act or thing which, in his judgment, may become necessary to obtain the relief provided for by the Flood Control Act.

Sec. 21. Expropriation

The following statutes provide for the acquisition of property for public purposes by expropriation.

(Louisiana Revised Statutes)

R.S. 19:2: Where a price cannot be agreed upon with the owner, any of the following may expropriate needed property:

(1) The state or its political corporations or subdivisions created for the purpose of exercising any state governmental powers;

(3) Any domestic or foreign corporation created for the construction of ... navigation canals;

(6) Any domestic or foreign corporations created for the construction or operation of waterworks, *filtration and treating plants, or* sewerage plants to supply the public with water and sewerage;

R.S. 33:4621: Municipalities and parishes may expropriate and otherwise acquire any private property, within or without their limits, for any of the purposes for which they are organized, and for any works that they are authorized to own or operate, or which they are authorized to lease or donate to the United States. This Part shall not be construed to confer authority upon a parish or municipality to expropriate property in any other parish without the consent of the police jury of the parish in which the property is situated.

Sec. 23. Prescription of Drainage Claims Against State

(Louisiana Revised Statutes)

R.S. 9:5624: When private property is damaged for public purposes any and all actions for such damages are prescribed by the prescription of two years, which shall begin to run when the damages are sustained.

R.S. 9:5626: When lands are appropriated for levees or levee drainage purposes all claims and actions for payment ... for lands and

improvements thereon actually used or destroyed ... shall prescribe within two years from the date on which the property was actually occupied, used or destroyed .... This prescription shall run against interdicts, married women, absentees, minors, and all others now excepted by law.

## OTHER STATE AGENCIES

Constitutional authorization for the creation by police juries of irrigation and gravity drainage districts is contained in Article 14, Section 14 (d), which provides:

> "The Legislature may also by general law authorize the Police Juries of the respective parishes to create Irrigation District gravity drainage and sub-drainage districts composed of territory either wholly within a parish, or partly within two or more parishes, and may by general law authorize such irrigation districts, drainage districts, and sub-drainage districts, through the governing body hereof, to incur debt and issue negotiable bonds to construct irrigation and gravity drainage works."

Other state agencies not discussed with particularity heretofore which nevertheless exercise functions relating to water and water use are the Louisiana Wild Life and Fisheries Commission, LSA - Const. Art. 6 § 1, R. S. 56:1, et seq; the Stream Control Commission of Louisiana, R. S. 56:1431, et seq.; the Louisiana State Board of Health, R.S. 40:1; the Louisiana State Parks and Recreation Commission, R.S. 56:1681, et seq; the Louisiana Recreational Advisory Council, R.S. 56: 1801; and Levee Districts, LSA - Const. Art. 16 § 1. The only interstate compact dealing directly with water use is the Sabine River Compact

between Louisiana and Texas under the administration of the Sabine River Compact Administration.

The Louisiana Wild Life and Fisheries Commission was established by the constitutional amendment as provided by Act No. 57 of the 1952 Legislature to protect, conserve, and replenish the natural resources of the state, the wildlife of the state, including wild game and non-game quadrupeds or animals, game, oysters, fish and other aquatic life, and is composed of seven Commission members all appointed by the Governor and a Director elected by the Commission. The Commission in general has full power and control over birds and animals whether they be game or fur-bearing or not; over all fish, whether salt or fresh water fish; over diamond-back terrapin, shrimp and oysters of this state. The Commission has also been charged to improve, enlarge and protect the natural oyster reefs of the state, to protect and propogate, when possible, all species of birds and game; to establish preserves and hatcheries; to rigidly enforce all laws relative to birds and game, all species of fish in the state whether salt water or fresh water fish, diamond-back terrapin and shrimp.

The Director of the Wild Life and Fisheries Commission enforces the rules and regulations adopted by the Stream Control Commission, and he or his authorized agency may "enter at all reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions relating to the pollution of any waters of the state.

The Commission may call upon any officer, board, department, school, university, or other state institution, and the officers and employees thereof, and require the furnishing of any assistance deemed necessary" to the carrying out of its functions. In addition, the Director of Wild Life and Fisheries Commission 'shall supervise all drainage of salt water and other noxious substances into the natural streams of the state". Owners or operators of oil producing properties discharging salt or other noxious substances into the natural streams of the state, when ordered by the said Director, shall immediately impound such substances, which substances may thereafter be released only by his permission.

The Stream Control Commission is composed of the Director of the Wild Life and Fisheries Commission, the Director of Public Works, the President of the State Board of Health, the Commissioner of Agriculture, the Commissioner of Conservation, the Executive Director of the Department of Commerce and Industry, and the Attorney General, or their duly authorized representatives. The Commission shall establish such pollution standards for the waters of the state as it deems necessary for the prevention of pollution tending to destroy fish life or to be injurious to the public health, the public welfare, or to other aquatic life or wild or domestic animals or fowls, and may make and promulgate such rules and regulations as it deems necessary to carry out its functions.

The State Board of Health, appointed by the Governor, is composed of a president and one member from each of the eight congressional districts of the state. Five members must be physicians; one member must be a dentist; one member must be an educator; and one member must be a pharmacist. The Board of Health has "exclusive jurisdiction, control, and authority over maritime quarantine and water supplies and waste disposal within the state."

The Louisiana State Parks and Recreation Commission consists of the Governor, the Registrar of the State Land Office and nine (9) other members to be appointed by the Governor to terms to run concurrently with his own. Of the nine (9) appointed members, one must be appointed from a panel of five members nominated by the Louisiana State Garden Society and one from a panel of five members nominated by the Louisiana Federation of Women's Clubs.

The major functions of the Commission are to plan and develop adequate parks and recreation programs for the state; and to prepare and maintain the state recreation plan; to prepare and maintain, under the supervision of the Louisiana Recreational Advisory Council, a comprehensive long-range statewide plan for development of outdoor recreation resources of the state; to cooperate with federal agencies, other political subdivisions of the state, and private groups in matters relating to parks and recreation.

The Louisiana Recreational Advisory Council consists of the Directors of the State Parks and Recreation Commission, Louisiana Wild Life and Fisheries Commission, Tourist Development Commission, Department of Public Works, Department of Highways, Forestry Commission, and the Registrar of State Land Office, Commissioner of Agriculture and Immigration, Chairman of the State Soil and Water Conservation Commission, and the Agriculture Extension Service, also two additional members to be appointed by the Governor and to serve at his pleasure. One of the said appointees shall be a recognized authority in the field of recreation, and the second shall be a recognized authority in the field of landscape architecture. The Chairman of the State Parks and Recreation Commission shall be ex-officio chairman of the council.

The Governor, in December of 1964, by executive order, created the Louisiana Recreational Advisory Council to improve the effectiveness of the State's participation in the field of recreation. It is the responsibility of the council to establish a comprehensive outdoor recreation policy and program for the State, and to give guidance, direction, and coordination of all recreation programs and activities of all State agencies and subdivisions cooperating and working through the State in order that the common objectives in the field might be identified and more effectively and economically attained.

Major rivers flowing through the State of Louisiana have created a continuing need to protect the lying flood plains for periodic flooding. This has led to the construction of an extensive system of levees to contain the waters.

Levee Districts. The State constitution authorizes the Legislature to provide for a statewide levee system. The Legislature has created a system of levee districts each with a board of levee commissioners.

Members of board of commissioners of levee districts are appointed by the Governor. Appointees are selected as follows: Each member of the House of Representatives representing a parish or part of parish lying within a levee district submits one name for each vacancy to be filled from the parish which he represents in the Legislature; each member of the Senate submits one name for each vacancy to be filled from the parish or parishes within the district which he represents in the Legislature. In making appointments, the Governor does not appoint any individual to a seat on the board of commissioners to represent a specific parish who was not recommended by one or more of the Legislators who represent that specific parish in the Legislature.

All members of the board of commissioners of levee districts shall have terms concurrent with that of the Governor appointment them.

There are twenty-one regularly incorporated levee districts in Louisiana and one in southeast Arkansas which contains levees that protect Louisiana from overflow and are considered by law a responsibility of the State of Louisiana. Twelve of these Levee Districts are

located in or abound the Red River Basin in Louisiana. They are: Tensas Basin Levee District; Fifth Louisiana Levee District; Caddo Levee District; North Bossier Levee District; Bossier Levee District; Red River-Bayou Pierre Levee and Drainage District; Cane River Levee and Drainage District; Red River, Atchafalaya and Bayou Boeuf Levee District; Campti-Clarence Levee District; Coushatta-Red River Levee District, Natchitoches Levee and Drainage District and Nineteenth Louisiana Levee and Drainage District. These levee districts, as created by law, embrace definite areas. The limit of each district is restricted to areas naturally subject to overflow and no high lands are included. A specific act of the Legislature is required to extend or decrease the size of any levee district.

The primary function of levee districts today is the maintenance of all levees, both district and federal, and the construction of drainage works necessary to protect these levees. In addition, the districts are empowered to perform any drainage or water project which will promote the general good.

It is also the job of the levee boards to keep close watch on all levees and to adopt rules and regulations for preserving the efficiency of the levees and flood control structures in their districts. One final function of the levee district boards is to serve as an informed group and a militant local organization with a vital stake in Louisiana's flood control interests.

The Sabine River Compact Administration is composed of two members from Louisiana, two members from Texas and a non-voting chairman representing the United States. It administers the Sabine River Compact, makes findings with reference to the allocation of the waters of the Sabine River in accordance with said compact and records and approves points of diversion from which water is taken from the Sabine River and its tributaries in the state line reach.

The Red River Compact Commission, composed of one commissioner from each of the States of Arkansas, Louisiana, Oklahoma and Texas and a chairman appointed by the President of the United States, is in the process of negotiating a compact for the Red River and its tributaries.

Negotiations to apportion the use of the waters of the Red River stream system were initiated in 1956 between the States of Arkansas, Louisiana, Oklahoma and Texas with the United States being represented by a Federal appointee acting as Chairman. Authority to conduct negotiations was granted by an act of Congress approved August 11, 1955.

Public Law 346-84th Congress, Chapter 784 1st Session provides:

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, of Arkansas, Louisiana, Oklahoma, and Texas to negotiate and enter into a compact providing for an equitable apportionment among them of the waters of the Red River and its tributaries, upon the condition

that one qualified person appointed by the President of the United States shall participate in such negotiations as Chairman, without vote, representing the United States, and shall make a report to the President of the United States and the Congress of the proceedings and of any compact entered into. Such parties thereto until it shall have been ratified by the Legislatures of each of the respective States, and approved by the Congress of the United States."

# PROGRAMS

## I. Research

Water resources research is being conducted at Louisiana State University under the "Water Resources Research Act of 1964", Public Law 88-379 (S. 2).

A Water Resources Study Commission was created by Act 188 of the 1964 Legislature and charged with the responsibility to "conduct a study of the water policy of the state, the need for revisions of such policy, the method of carrying out the revised policy, and the manner in which the revised policy shall be administered, including its relationship to the several state agencies presently having responsibilities in the field of water resources." The commission was further directed by the Act to submit a draft of legislation to implement their recommendations."

(a) A cooperative drainage area determination for river and stream basins through the State is being done by the U. S. Geological Survey in cooperation with the Department of Public Works.

## II. Data Collection and Interpretation

(a) Cooperative State-Federal programs.

1) A stream gaging, sediment sampling, and quality of water program is being carried on in cooperation with the U. S. Geological Survey by the Louisiana Department of Public Works.

2) A statewide program to collect and analyze high-water data is carried on in cooperation with the U. S. Geological Survey by the Louisiana Department of Highways.

3) Ground water data collection, study and evaluation is being carried on in cooperation with the U. S. Geological Survey by the Louisiana Department of Public Works and the Louisiana Geological Survey.

4) A topographic mapping program is carried on in cooperation with the U. S. Geological Survey by the Department of Public Works.

(b) State Programs

The Department of Public Works gathers basic hydrologic and hydraulic data and makes necessary field surveys.

1) Establishment of a network of vertical control along the rivers and streams of the state, supplementing those established by the Federal agencies.

2) Topographic surveys of flood plains and dam and reservoir sites for study and planning purposes.

3) Profiles and cross sections of stream channels, overflow areas, bridges, reservoirs, dams and other structures.

4) Establish and maintain staff gages on various streams and structures for determining daily or intermittent stages. Determine the elevation of high water marks for purpose of determining water surface profiles of streams.

5) Geologic investigations of proposed dam or other hydraulic structure sites.

6) Drills water test holes to determine the quantity and quality of ground water available to water districts and towns.

(c) The Stream Control Commission carries on a water quality monitoring program in the state. Samples are collected for physical and chemical analyses.

The monitoring program has the following specific objectives:

1) To determine physical and chemical characteristics of Louisiana's waters under changing conditions.

2) To indicate, when possible, the sources of pollution entering a stream.

3) To compile data for future pollution abatement activities.

4) To determine background data on certain types of wastes, such as chlorides, and to detect critical changes.

5) To obtain data useful for municipal, industrial, agricultural, and recreational uses.

6) To procure data useful and necessary for securing public action.

III. Planning

(a) Factors affecting planning.

Louisiana has a number of serious problems as well as distinct opportunities as a result of the characteristics of the State's water and related land resources. The fact that Louisiana is located at the mouth of the vast Mississippi River system is perhaps the most striking characteristic. The Mississippi River system includes the Atchafalaya, Black and Ouachita, Vermilion and Red River and Bayou Teche. Although the State enjoys a number of shipping and trade advantages from this position, it also must deal with problems of floods, shortage of water in drought periods, distribution, and drainage. The extreme silt load carried by interstate streams is a constant problem. The water quality of these streams are also of great concern to Louisiana.

Of course, not all water and related land resource problems are produced externally. Many water and related land conditions are under the direct control of the State. Some internal questions requiring careful consideration are the use and development of water and related land resources for improving living standards in rural and urban areas (especially where there are substantial number of disadvantaged persons), management of certain areas for the preservation of outstanding natural habitat, enhancement of fish and wildlife, development of recreation, port and harbor improvements, and local water supply and waste disposal development.

Perhaps nowhere else in the United States are the economies of land and water so intimately related. This relationship, together with the capitol and human resource conditions and capabilities, must be fully understood for proper planning. The fact that there is a certain amount of interchangeability among resources, and that their development must proceed with a high degree of balance, makes it imperative that water and related land resources be considered in relation to one another as well as to other natural, capital and human resources.. Louisiana has enjoyed rapid and substantial economic growth based largely on natural resources and trade which have attracted private and public capital; correspondingly, citizens of the state and nation have benefited markedly.

Louisiana's great interest in and need for comprehensive water and related land resources planning results in part from its high degree of economic dependency on resources closely related to water. These range from oil, gas, and sulphur in the offshore, tideland, swamp, and river-bottom areas, to commercial fishing and enterprises based on recreation, and trade developed because of convenience of export of agricultural products and import of mineral and energy raw materials. Virtually the entire economy is a direct function of the condition of water resources.

It is imperative that Louisiana determine the probable impact of such changes as highway construction in marshlands and coastal areas on drainage patterns and navigation systems, pesticide concentration on aquatic life and water quality alterations in land-use patterns on pollution and hydrologic character, and land drainage and water supply development on the socioeconomic conditions in rural and urban areas.

(b) Authority: Louisiana Statutes Annotated -- Revised Statutes 38:17 and Act 2 of 1942 provides for the Department of Public Works to assume the powers and duties of the State Planning Commission, created by Act 38 of 1936, which include the adoption of a state master plan "for the physical development of the State.....Such master plan may include, among other things, the general location, character and extent of ... waterways, waterfront development, ... wildlife refuges, ..... drainage and sanitary systems, work for the prevention of stream pollution ... which, by reason of their function, size, extent, location, legal status or other reason are of statewide as distinguished from mere local concern .... or fall appropriately within the scope of the State, as distinguished from a mere local program or plan; also, the general location and extent of ... open development areas for purposes of .... water supply, sanitary and drainage facilities ... water conservation ....", etc. Furthermore, such a State plan "shall be made with the general purpose of guiding and accomplishing a co-ordinated, adjusted,

and efficient and economic development of the state which will, in accordance with present and future needs, and resources, best promote the health, safety, morals, order, convenience, prosperity, and welfare of the people.

(c) Planning programs in Louisiana.

1) The State of Louisiana has obtained a 701 state planning grant from the Department of Housing & Urban Development for the preparation of a "program design" which details the steps necessary for formulating a state plan.

2) Under Title III of the Water Resources Planning Act of 1965 (P. L. 89-80), The Louisiana Department of Public Works is developing a comprehensive water and related land resources plan for the state in cooperation with the Water Resources Study Commission.

IV. Construction and Development

(a) Flood Control

The Red River drains an area of 91,000 square miles in Texas, Oklahoma, Arkansas, and Louisiana. It is about 1,300 miles long and connects with the Atchafalaya River at the latitude of Old River, Louisiana.

The river and its tributaries are subject to floods caused by general storms of wide geographical extent, and occuring mostly in the eastern or lower portion of the Red River basin. Important tributaries in Louisiana are Loggy Bayou, Bayou Pierre, Saline Bayou,

and Cane River.

The frequency of destructive floods on the Red River has led to the creation of ten levee districts on the river in Louisiana during the period 1890-1964. The districts which were active in 1965 spent $1,595,000 on flood control, including engineering and construction funds contributed by the State of Louisiana, Department of Public Works. During this time, parish police juries spent $500,000 in the main valley of Red River for drainage and flood control improvements. Annual expenditures range between $1,000,000 and $2,000,000. Total expenditures to date amount of $47,938,000, or approximately $147,000,000 at today's prices.

The plan for flood control on the Red River in Louisiana provides for reservoirs, levees, channel improvements, and bank stabilization works. Levees have been constructed throughout most of the length of Red River in Louisiana. The South Bank Levee below Alexandria provides protection against inundation to approximately 1,250,000 acres of south central Louisiana which is largely outside of the Red River Basin.

(b) Water Supply

Demands for water increased in the survey area by thirteen percent from 1960 to 1965. Of the 500 million gallons per day being pumped in 1965, 93 percent is obtained from surface water sources. The quality of most of the available ground water in the survey area is such that it is not economically feasible for use at this time. However, it may be necessary to utilize ground water sources in the future as

demands increase.

The Department of Public Works is the State agency principally concerned with water supply. The Department plans and constructs water conservation projects and provides engineering, economic, and other advisory services for such projects to local government subdivisions and special districts. In this area, the Department acts as a service department to other State departments and agencies.

(c) Water Quality Control

The Louisiana Stream Control Commission exercises regulatory powers to control surface pollution. Coordination with other agencies is effected through the members of the commission.

This commission promulgates rules, regulations and orders for the quality control of surface waters. Most of its concern is with industrial waste, reviewing the quality of the effluent discharged by both newly located industries and industries long established in the State. The aim is to prevent further pollution and even effect some improvement in the quality of surface water. All industrial plans for new effluent discharge come before the Commission for approval and old discharges are checked periodically. Each case is reviewed on its own merits.

The Commission largely leaves to the State Board of Health the regulation of municipal waste discharges by treatment plants. Only rarely does the Commission find it necessary to intervene.

(d) Navigation

1) Red River is characterized by wide fluctuations in stage, and by shifting bed and banks and unpredictable shoaling, conditions adverse to the interest of navigation. With the present open river conditions and river flow regulated by Denison Dam, the controlling depths for navigation from January to July are about 6 feet from the mouth to Alexandria, 5 feet to Shreveport, and 4 feet to Fulton. During the remainder of the year, controlling depths are generally about 6.5 feet from the mouth to Black River, about 4 feet from there to Alexandria, 1 to 2 feet to Shreveport, and less than 1 foot from Shreveport to Denison Dam. In 1962, approximately 400,000 tons of traffic moved over the lower 35 miles of the Red River to the mouth of Black River, approximately 300,000 tons of which moved on the Ouachita-Black channel; the remainder moved on Red River above mile 35.

2) Commercial traffic on the Jefferson-Shreveport Waterway is limited to the local movements on Caddo Lake above the dam. Present commercial traffic consists of that associated with oilfield development and production (of an estimated 350 oil wells) in Caddo Lake. Caddo Dam was constructed for the purpose of providing navigable depths from the dam to Jefferson, Texas; however, the dam itself is an obstruction to traffic moving to or from the Red River. During periods of drought, channel depths are sometimes insufficient to maintain navigation from the dam to Jefferson, Texas.

(e) General Recreation

The development of the recreational uses of water resources provides for various activities; fishing, boating, water skiing, swimming, picnicking, and camping. Many state agencies are concerned with the utilization of water resources for recreation; some of which are not primarily water policy administering agencies, but, nevertheless, develop the recreational aspects of water while accomplishing closely related operations.

The most significant state agencies charged with developing the recreational potentials of water resources includes the State Parks and Recreation Commission, the Department of Public Works, and the Wild Life and Fisheries Commission.

The State Parks and Recreation Commission develops and regulates the recreation uses of the state parks and is participating with the United States Department of the Interior, Bureau of Outdoor Recreation, under the Land and Water Conservation Program for the development of recreation in the State. In conjunction with this program, the Commission has prepared the Louisiana State Wide Comprehensive Outdoor Recreation Plan.

The Department of Public Works plans and instigates construction of numerous multiple purpose water projects with significant recreational potential, many of which are constructed by the U.S. Army, Corps of Engineers.

The Wild Life and Fisheries Commission exercises important functions related to the recreations of hunting and fishing since it plans the execution of the fish and game laws, enforces pollution controls important to the preservation of fish and game, and establishes state fish and game sanctuaries. All of the preserves are under the supervision of the commission.

(f) Fish and Wildlife

As the population of Louisiana and the United States continues to expand and more and more leisure time and money become available, the fish and wildlife assets of Louisiana will become more and more of a premium. Currently, the Lower end of the Red River Basin is being extensively cleared for soybeans, other crops and pasture. As the land is cleared and our bayous and streams dredged and channelized, those areas remaining in their natural state, or as near natural as possible, become much more important.

In carrying out the authority designated to it, the Louisiana Wild Life and Fisheries Commission has obtained by lease, purchase or statements of understanding tracts of land in the Red River Basin (see Fish and Wild Life Appendix) that are dedicated to the preservation of our fish and wildlife and to the recreation of the people of Louisiana. Those areas owned by the Commission are being developed as rapidly as possible. Areas leased by the Commission, but privately owned, are in threat of being cleared and planted to soybeans by their owners. The

ten Wildlife Management Areas located within the Red River Basin have a total acreage of 259,276 acres.

The Louisiana Wild Life and Fisheries Commission has either stocked, developed management plans, built or plans to build, boat ramps on the following lakes located within the Red River Basin drainage or backwater areas:

Caddo Lake, Black Bayou Lake, Lake Bistineau, Cane River Lake, Kepler Lake, Black Lake, Clear Lake, Saline Lake (Natchitoches Parish), Iatt Lake, Cane River Lake, Smithport Lake, Sibley Lake, Larto Lake and Saline Lake (Avoyelles Parish).

## FISH AND WILDLIFE APPENDIX

| PROJECT | PARISH | PURPOSE | COMMENTS |
|---|---|---|---|
| Soda Lake Public Shooting Grounds | Caddo | Waterfowl primarily doves and other small game. | 1240 acres - limited hunting opportunities, open to public hunting on a controlled basis. |
| Bodcau Game Management Area | Bossier<br>Webster | Deer, waterfowl, dove, quail, squirrel, fishing, camping and picnicking. | 32,471 acres - leased from U.S. Army Corps of Engineers, only WMA on which money derived from timber sales on area can be allocated for improvements of area, has been stocked with turkey and exotic game birds, open to public hunting, fishing, and other recreational purposes. |
| Caney Wildlife Management Area | Webster<br>Claiborne | Deer, waterfowl, squirrel, dove, quail, camping and picnicking. | 31,000 acres - agreement with U.S. Forest Service, in 3 sections, currently being managed primarily for deer; turkey have been stocked, open to public hunting, fishing and other recreational purposes. |
| Red Dirt Wildlife Management Area | Natchitoches | Deer, turkey and quail | 40,082 acres - agreement with U.S. Forest Service, several wildlife research projects are currently underway on this area, open to public hunting, fishing, camping and other recreational purposes. |
| Catahoula Wildlife Management Area | Grant | Deer, squirrel, turkey | 36,117 acres - agreement with U. S. Forest Service, open to public hunting, fishing and other recreational purposes. |

| PROJECT | PARISH | PURPOSE | COMMENTS |
|---|---|---|---|
| Alexander State Forest Wildlife Management Area | Rapides | Deer primarily | 7,875 acres - agreement with La. Forestry Commission, approximately half this area will soon be innundated by Indian Creek Reservoir, open to public hunting, fishing and other recreational purposes. |
| Saline Wildlife Management Area | LaSalle | Deer, waterfowl, fishing, squirrel, turkey, dove and quail. | 60,276 acres - owned by La. Wild Life and Fisheries Comm., being fenced and extensively developed for all types of hunting, fishing and associated outdoor recreation, picnic area, airplane landing strip, boat ramps, open to public hunting, fishing and other recreatinnal purposes. |
| Grassy Lake Game Management Area | Avoyelles | Deer, waterfowl, fishing, and camping. | 26,000 acres - overflow and backwater area, approximately half has been cleared for soybean crops by owners, important fish producing area, open to public hunting, fishing and other recreational purposes. |
| Spring Bayou Wildlife Management Area | Avoyelles | Waterfowl, deer, fishing and camping | 11,238 acres - owned by La. Wildlife and Fisheries Comm., overflow and backwater area, to be fenced and extensively developed for outdoor recreation and access, important fish producing area, open to public hunting, fishing and other recreational purposes. |
| Red River Wildlife Management Area | Concordia | Deer, waterfowl, squirrel, and fishing | 12,977 acres - owned by La. Wildlife and Fisheries Commission, overflow and back-water area, to be fenced and developed, very important as a fish producing area, open to public hunting, fishing and other recreational purposes. |

# APPENDIX A - INVENTORY

1. Non-Federal Projects constructed by the Louisiana Department of Public Works from 1941 to June 30, 1967.

(a) Reservoirs: During this period, the Louisiana Department of Public Works constructed twelve reservoirs within the study area. For this survey, only those reservoirs containing 5,000 acre-feet or more are reported. These reservoirs inundate a total of 67,690 acres and contain approximately 430,700 acre-feet of water. These figures do not include Cross Lake, a reservoir constructed by the City of Shreveport, Louisiana. Plans have been completed on two other reservoirs within the survey area.

(b) Drainage and Levee Projects: The Louisiana Department of Public Works has completed 147 drainage projects totaling 1,150 miles of drainage channels and involving 34,700,000 cubic yards of earthwork in the study area. There have been 60 levee projects completed by the Department involving 65 miles of levees. A total of 2,500,000 cubic yards of earthwork was done in these projects.

(c) Other Water Resources Projects: Within the study area, the Louisiana Department of Public Works has built 62 dams, floodgates, spillways and other control structures. Nine boat-launching ramps were constructed in public recreational areas.

(d) Projects by other agencies: This inventory does not include the numerous projects constructed by other agencies, governmental sub-divisions or local agencies. Information relative to water resources projects done by these agencies are not available to the Department of Public Works at this time.

TABLE I

NON-FEDERAL RESERVOIRS
CONSTRUCTED BY LOUISIANA DEPARTMENT OF PUBLIC WORKS

EXISTING RESERVOIRS

| Project Name | Parish | Tributary of Red River | Date Completed | Drainage Area (Sq. Mi.) | Surface Area (Acres) | Storage Volume (Ac. Ft.) | Purpose |
|---|---|---|---|---|---|---|---|
| Black Lake Bayou (1) | Caddo | Twelve Mile Bayou | 1955 | 231 | 3,960 | 17,750 | R |
| Black Lake & Clear Lake | Natchitoches, Red River & Winn | Saline Bayou | 1949 | 920 | 13,800 | 109,000 | R |
| Cane River Lake (2) | Natchitoches | Cane River | 1949 | 34 | 1,350 | 12,000 | R |
| Cross Lake* (3) | Caddo | Twelve Mile Bayou | 1925 | 259 | 8,830 | 70,600 | W.S., R |
| Iatt Lake | Grant | Bayou Rigolette | 1957 | 242 | 5,350 | 13,500 | R |
| Kepler Creek Lake | Bienville | Saline Bayou | 1959 | 46 | 1,925 | 16,800 | R |
| Lake Bistineau | Bienville & Bossier | Loggy Bayou | 1951 | 1,410 | 17,200 | 120,400 | R |
| Larto Lake (4) | Catahoula | Big Larto Bayou | 1960 | 419 | 2,200 | (Est. 20,000) | R |
| Little River (4) | Avoyelles | Bayou Natchitoches | --- | 77 | 6,850 | 27,000 | R |
| Nantachie Lake | Grant | Nantachie Creek | 1964 | 77 | 1,580 | 11,200 | R |

Table I, Continued

| Project Name | Parish | Tributary of Red River | Date Completed | Drainage Area (Sq. Miles) | Surface Area (Acres) | Storage Volume (Ac. Ft.) | Purpose |
|---|---|---|---|---|---|---|---|
| Saline Lake | Natchitoches, Red River & Winn | Saline Bayou | 1959 | 420 | 8,350 | 52,000 | R |
| Sibley Lake | Natchitoches | Cane River | 1962 | 40 | 2,175 | 19,500 | W.S. |
| Smithport Lake | DeSoto | Bayou Pierre | 1953 | 205 | 2,950 | 11,500 | R |
| RESERVOIRS PLANNED FOR DEVELOPMENT | | | | | | | |
| Coochie Brake | Winn | Nantachie Creek | --- | 12 | 1,130 | 5,000 | R |
| Mill Creek | Bienville | Saline Bayou | --- | 13 | 700 | 9,500 | W.S., R. |

**********

Note: Reservoirs with storage volume less than 5,000 ac. feet are not listed.

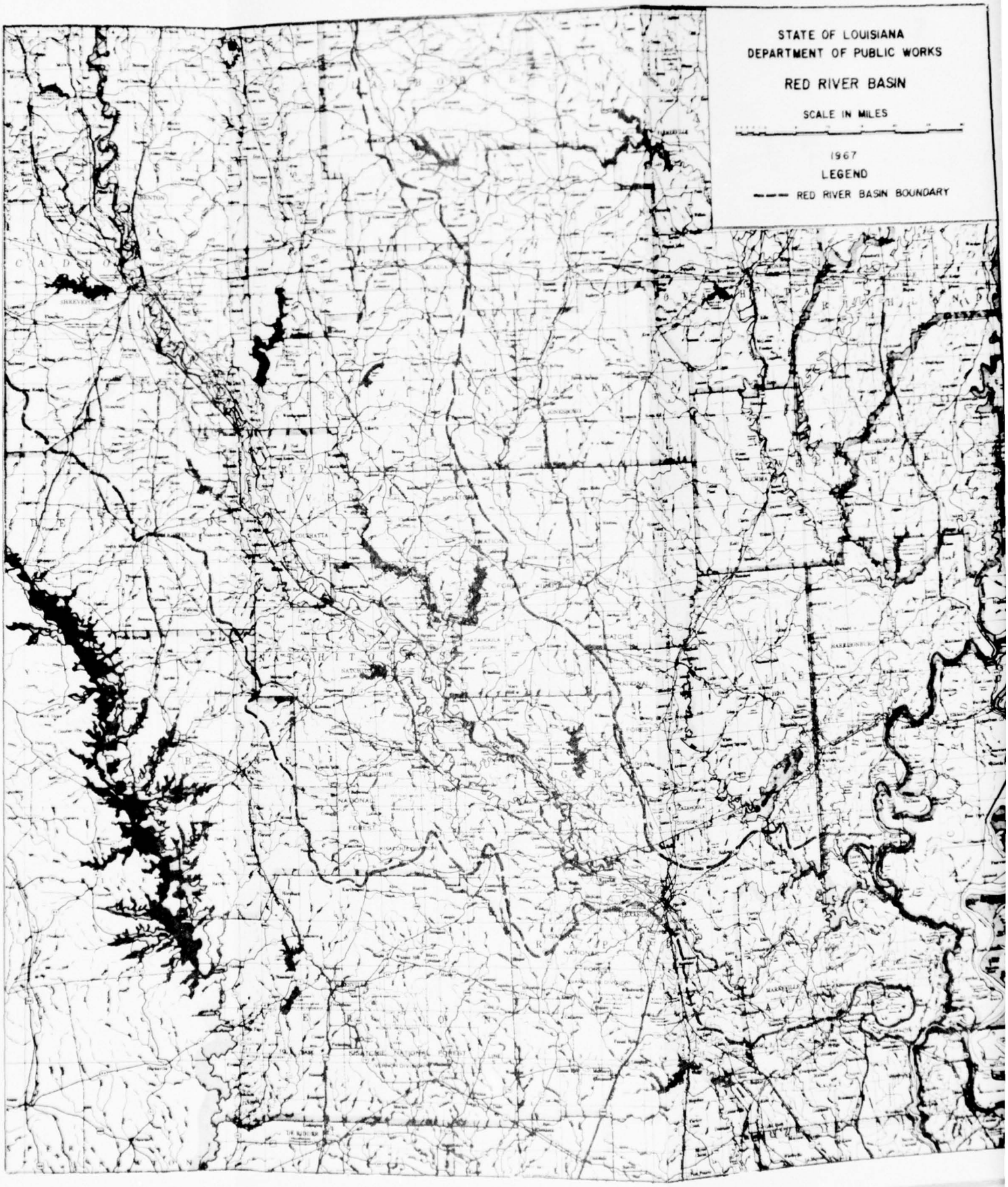
*Constructed by the City of Shreveport
R. - Recreation
W.S. - Water Supply
1 - U.S.E.D. Authorized Project Inactive status
2 - Some irrigation water is obtained from lake
3 - Water supply reservoir for the City of Shreveport, Louisiana
4 - Control Structure

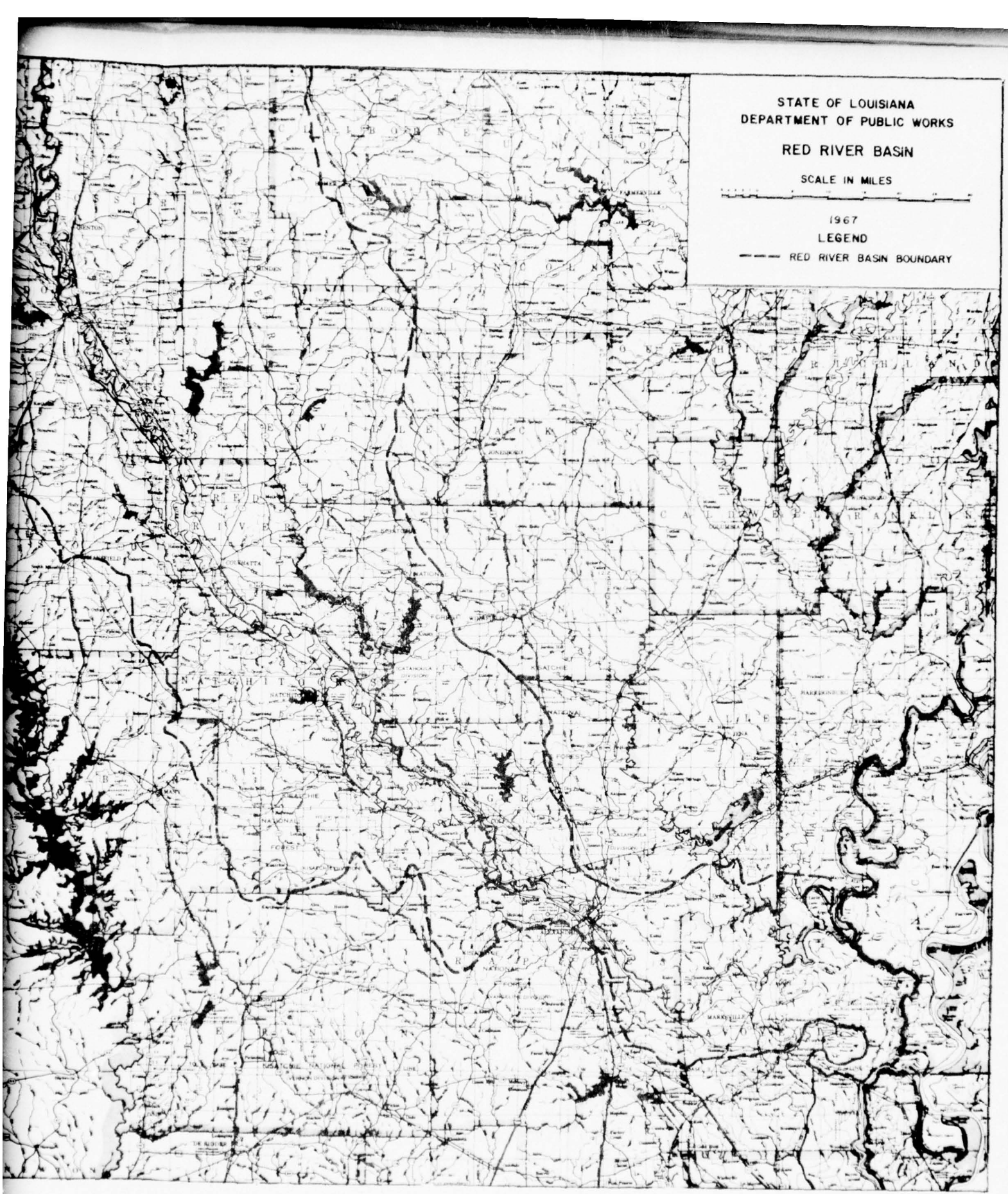
TABLE II

INVENTORY OF NON-FEDERAL PROJECTS
CONSTRUCTED BY LOUISIANA DEPARTMENT OF PUBLIC WORKS

1941 - June, 1967

| Parish | Drainage Projects | | | Levee Projects | | | Control Structure No. |
|---|---|---|---|---|---|---|---|
| | No. | Miles | Cubic Yards | No. | Miles | Cubic Yards | |
| Avoyelles | 8 | 145.2 | 2,048,390 | 1 | .6 | 108,385 | 1 |
| Bienville | 6 | 6.2 | 137,012 | - | - | ------ | 5 |
| Bossier | 34 | 357.3 | 10,539,351 | 9 | 6.4 | 428,825 | 9 |
| Caddo | 45 | 149.4 | 9,253,465 | 26 | 39.6 | 1,531,382 | 4 |
| Claiborne | 1 | .4 | 5,381 | - | - | ----- | - |
| DeSoto | 3 | 7.8 | 557,743 | - | - | ----- | 4 |
| Grant | 2 | -- | -------- | 4 | - | 2,281 | 7 |
| Natchitoches | 14 | 207.3 | 3,007,266 | 10 | 14.0 | 335,437 | 17 |
| Rapides | 15 | 237.5 | 5,399,446 | 7 | 2.5 | 70,119 | 1 |
| Red River | 19 | 136.1 | 3,722,549 | 3 | 1.7 | 24,301 | 8 |


STATE OF LOUISIANA
DEPARTMENT OF PUBLIC WORKS
RED RIVER BASIN
SCALE IN MILES
1967
LEGEND
RED RIVER BASIN BOUNDARY


STATE OF LOUISIANA
DEPARTMENT OF PUBLIC WORKS
RED RIVER BASIN
SCALE IN MILES
1967
LEGEND
RED RIVER BASIN BOUNDARY

COMPREHENSIVE BASIN STUDY
RED RIVER BASIN BELOW DENISON DAM
ARKANSAS, LOUISIANA, OKLAHOMA, AND TEXAS

# WATER LAWS FROM THE OKALHOMA STATUTES

Extracted from

PUBLICATION NO. 8

Compiled and published by

OKLAHOMA WATER RESOURCES BOARD

MARCH 1968

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**Copy of the laws governing water in this booklet are taken verbatum from the Oklahoma Statutes and any reference therein to the State Engineer, the Conservation Commission or the Oklahoma Planning and Resources Board now is a reference to the Oklahoma Water Resources Board.**

# WATER AND WATER RIGHTS

**Chapter 5, 1961, Title 11.**
**CITIES AND TOWNS**
**Waterworks**
**Acquisition, Construction and Operation**

**Section 292: Condemnation of land and water rights.**—The city councils of such cities, or the boards of trustees of such towns, shall have power and authority to dam any river or stream, not navigable, and condemn and appropriate in the name of and for the use of the city or town, any such land located in or outside of the corporate limits thereof as may be necessary for the construction and operation of said waterworks and to condemn, appropriate and divert the water from such river or stream, or so much thereof, as may be deemed necessary for such purposes. Such appropriation of land or of water rights by any city or town shall be governed by the procedure prescribed for the condemnation of land for railway purposes. Upon the payment made or deposit of the award of the commissioners to the clerk of the district court, said city or town, shall be vested with the perpetual right to use the land so condemned and the right to divert such water condemned by such commissioners for the purpose mentioned herein, and such water and the right to divert the same as aforesaid may at the option of such city, town or village be described in capacity by a given number of gallons daily, or as a quantity sufficient for the purposes aforesaid; and the exercise of this power shall be a continuing right and not exhausted by one or more exercises thereof: Provided, that the diverting of said water shall not change the regular channel or watercourse of such stream so damned.

**Section 305: Acquisition of lands and water for future needs—Sale outside corporate limits no defense.**—Any city or town within the State of Oklahoma owning and operating, or proposing to own and operate, a system of waterworks and water plant to supply such city or town, and the inhabitants thereof, with water, may provide for its contemplated future water, waterworks and water plant requirements, in advance of its immediate needs, and may, for that purpose, acquire lands and water both within and without the corporate limits of such city or town, and within the State of Oklahoma, and such cities and towns invested with the power of eminent domain for that purpose, such power to be exercised in the manner provided by law for the condemnation of lands by cities and towns for waterworks purposes; and it shall be no defense against the exercise of such power of eminent domain that the city or town is selling and furnishing water to other municipalities or to persons, firms or corporations without

the corporate limits of such city or town.

**Chapter 2, 1963 Supplement, Title 60.**
**PROPERTY**
**Estates in Real Property**

**Section 60: Ownership of water–Use of running water.**–The owner of the land owns water standing thereon, or flowing over or under its surface but not forming a definite stream. The use of ground water shall be governed by the Oklahoma Ground Water Law. Water running in a definite stream, formed by nature over or under the surface, may be used by him for domestic purposes as defined in Section 2(a) of this Act, as long as it remains there, but he may not prevent the natural flow of the stream, or of the natural spring from which it commences its definite course, nor pursue nor pollute the same, as such water then becomes public water and is subject to appropriation for the benefit and welfare of the people of the State, as provided by law; Provided however, that nothing contained herein shall prevent the owner of land from damming up or otherwise using the bed of a stream on his land for the collection or storage of waters in an amount not to exceed that which he owns, by virtue of the first sentence of this Section so long as he provides for the continued natural flow of the stream in an amount equal to that which entered his land less the uses allowed in this Act; provided further, that nothing contained herein shall be construed to limit the powers of the Oklahoma Water Resources Board to grant permission to build or alter structures on a stream pursuant to Title 82 to provide for the storage of additional water the use of which the land owner has or acquires by virtue of this Act.

**Chapter 1, 1961, Title 82.**
**IRRIGATION AND WATER RIGHTS**
**In General**

**Section 2: Right of eminent domain.**–Any person, corporation or association may exercise the right of eminent domain to acquire any right to the use of water for beneficial purposes, and to acquire right of way for the storage or conveyance of waters for beneficial use, including the right to enlarge existing structures and use the same in common with the former owner. Such right of way shall in all cases be so located as to do the least damage to private or public property, consistent with proper and economical engineering construction. Such rights may be acquired in the manner provided by law for the taking of private property for public use.

**Section 3: Diversion of water.**—Water turned into any natural or artificial watercourse by any party entitled to the use of such water may be reclaimed below and diverted therefrom by such party, subject to existing rights, due allowance for losses being made by the State Engineer.

**Chapter 1, 1963 Supplement, Title 82.**
**WATER AND WATER RIGHTS**
**Irrigation and Water Rights**

**Section 1-A: Right to use water—Domestic use—Priorities.**—(a) Beneficial use shall be the basis, the measure and the limit of the right to the use of water; provided, that water taken for domestic use shall not be subject to the provisions of this Title. Any natural person has the right to take water for domestic use from a stream to which he is riparian or to take stream water for domestic use from wells on his premises, as provided in Section 1 of this Act. "Domestic Use" means the use of water by a natural individual or by a family or household for household purposes, for farm and domestic animals up to the normal grazing capacity of the land, and for the irrigation of land not exceeding a total of three (3) acres in area for the growing of gardens, orchards and lawns, and water for such purposes may be stored in an amount not to exceed two years supply. The provision of this Act shall not apply to farm ponds or gully plugs which have been constructed under the supervision and specifications of the Soil and Water Conservation Districts prior to the effective date of this Act.

(b) Priority in time shall give the better right. From and after the effective date of this Act, the following priorities for the use of water and no other shall exist:

1. Priorities to the quantity of water put to beneficial use prior to November 15, 1907 to the extent to which the priority has not been lost in whole or in part pursuant to Section 32 of this Title when the same shall have been perfected as provided by Title 82 and rules and regulations adopted by the Oklahoma Water Resources Board. Such said priorities shall date from the initiation of the beneficial use.
2. Priorities decreed to exist in adjudications brought in pursuance of this Title where such adjudications have been initiated prior to the effective date of this Act to the extent to which these priorities have not been lost in whole or in part pursuant to Section 32 of this Title. Such said priorities shall be dated as of the date assigned to them in the respective adjudication decrees.
3. Priorities based upon applications for appropriations where the same shall have been perfected heretofore under the law heretofore applicable to the extent to which the priority has not been lost in

whole or in part pursuant to Section 32 of this Title. Such said priorities shall be dated as of the date of the application therefor.

4. Priorities based upon applications for appropriations to the extent the priority has not been lost in whole or in part pursuant to Section 32 of this Title where the same shall be perfected after the effective date of this Act, as provided by Title 82 and rules and regulations adopted by the Oklahoma Water Resources Board pursuant thereto. Such said priorities shall date from the date of application for the priority.

5. Priorities based on the withdrawal of water by the United States pursuant to Section 91 of this Title to the extent to which the priority has not been lost in whole or in part through non-utilization as provided by the said Section or pursuant to Section 32 of this Title. Such said priorities shall vest in the users of said water as of date of notification given pursuant to Section 91 of this Title.

6. Priorities based upon present beneficial use prior to the effective date of this Act and initiated on or subsequent to November 15, 1907, to the extent to which the priority has not been lost in whole or in part pursuant to Section 32 of this Title where the same has been perfected as provided by Title 82 and rules and regulations adopted by the Oklahoma Water Resources Board pursuant thereto. Such said priorities as to each quantity of water shall date from the initiation of the beneficial use of that quantity of water. Provided, however, that no priority based solely upon this subdivision 6 shall take priority over priorities which bear a priority date earlier than the effective date of this Act and which arise by virtue of compliance with the provisions of the first five subdivisions of this Section.

7. Priorities based upon beneficial use of that portion of the water designated by the Soil Conservation Service engineers as necessary for the sediment pool where landowners have granted easements without compensation for upstream flood control impoundments under the sponsorship of Soil and Water Conservation Districts prior to the effective date of this Act to the extent to which the priority has not been lost in whole or in part pursuant to Section 32 of this Title when the same shall have been perfected as provided by Title 82 and rules and regulations adopted by the Oklahoma Water Resources Board. Such said priorities shall date from the date of the grant of the easement.

Subsequent to the effective date of this Act those landowners who shall grant easements for such upstream flood control impoundments may acquire a priority for beneficial use of that water designated as the sediment pool by complying with subsection (b) 4 of this Section..

(c) When any person might claim a priority under more than one of the numbered subdivisions of subsection (b) he may elect which

subdivision shall control his priority date. Nothing in this provision shall be construed to prohibit his electing different priorities under one or more of the subdivisions of subsection (b) for different quantities of water.

**Section 4: Impairment of water rights—Suits in district court.**—Any person having a right to the use of water from a stream as defined by this Title, or Title 60, Section 60, O.S. 1961, as amended, whose right is impaired by the act or acts of another, or others, may bring suit in the District Court of any county in which any of the acts complained of occurred. Provided, however, that nothing herein contained shall be construed to empower District Courts to recognize rights to use the water of a stream unless such rights have heretofore been established pursuant to this Title or are claimed under Title 60, Section 60, O.S. 1961, as amended. Provided, however, that the Attorney General shall intervene on behalf of the State in any suit for the adjudication of rights to the use of water if notified by the Oklahoma Water Resources Board that the public interests would be best served by such action.

**Section 5: Determination of vested rights—Aggrieved persons—Appeal.**—Any person aggrieved by a determination of vested rights as provided for in Title 82, Section 1(b), or by the grant or denial of a permit or license as provided for in this Title may appeal to the district court for the county in which the point of diversion of the vested right or the permit or license is located within sixty days after the final determination or decision thereon. Copies of the petition shall be served on the Board and all parties of record. The filing of the petition does not itself stay enforcement of the decision. The Board may grant, or the reviewing court may order, a stay upon appropriate terms.

Within thirty days after the service of the petition, or within further time allowed by the court, the Board shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

The decision of the Water Resources Board shall be presumed to be correct, and the appellant shall have the right to present evidence, oral argument and submit written briefs to rebut such presumption. The court may reverse, modify or affirm the decision of the Board or remand the case for further proceedings before the Board.

Any aggrieved party or the Oklahoma Water Resources Board may

obtain a review of any final judgment of the district court under this Title by an appeal to the Supreme Court. The appeal shall be taken as in other civil cases.

**Section 6: Procedure for determining persons possessing vested rights to water.**—The Board or its authorized representatives shall proceed upon approval of this Act to make the necessary surveys and gather data and other information for the proper understanding and determination of all persons using water throughout this State for beneficial purposes in order to establish vested rights thereto as defined in Section 2(b), H.B. 662, 29th Legislature. Such survey data and other information shall include, but shall not be limited to, the names and last known mailing address of all applicants or claimants for the use of water of record with the Board, including application number and date thereof, the legal description of the place of withdrawal and use, quantity of water applied for or claimed in gallons or acre-feet per year, purposes of use, amount of water actually put to beneficial use each year, and such information shall be compiled and made a matter of record in the office of the Board. As soon as one or more county or counties and/or one or more stream systems have been surveyed, and the information compiled as herein provided, the Board shall carefully review the same and make an order listing the applicants or claimants who, in the Board's opinion from the information then available to it, are vested water rights holders by virtue of Section 2(b), H.B. 662, 29th Legislature. Said order shall set out the priority date, place purpose and volume of water used by each of the claimants or applicants. Provided that the said order shall be plainly marked "Tentative Order establishing vested rights in such county or counties and/or stream systems" naming the county or counties and/or stream systems. As soon as the tentative order as determined by the Board is prepared, a copy of said order shall be forwarded by registered or certified mail to each applicant or claimant to the use of water within the area in which vested water rights are to be determined and the following notice of public hearing shall be included therewith:

A public hearing of the applicants and claimants for the use of water in which vested rights are to be determined in the_____ county and/or _____ stream system will be held by the Oklahoma Water Resources Board at _____ hour on _____ day of _____ at _____, and continued each day thereafter until all parties having an interest have an opportunity to be heard. The hearing will be held at a central location in the area under consideration.

All of the following persons may, but need not appear at the hearing regarding their rights to continue the use of water:

(1) Those persons claiming a right to the use of water for domestic use.

(2) Any person who is a party to any suit pending in the courts for an adjudication of water rights in the area under study when such suit shall have been filed prior to the effective date of H.B. 662, 29th Legislature.

(3) Any person who is in agreement with the findings of the Board for determination of vested rights as determined by the tentative order of vested water rights under consideration at the hearing.

Any person claiming a vested right for the beneficial use of water within the area under study for which vested rights are to be determined may appear at the hearing in person or represented by legal counsel.

Any person dissatisfied or who feels his rights are impaired by the findings and determination of the Board in the tentative order of vested water rights under consideration at the hearing shall file pursuant to this Section at the hearing, or to the Board at its office prior to the hearing, the following:

(a) The name and post office address of the claimant or contestant.

(b) The source to which the claim relates.

(c) The amount of water claimed or disputed.

(d) The location of the diversion works and use of water claimed.

(e) The dates of the beneficial uses made.

(f) A description of the land irrigated if the claim or contested claim related to irrigation use, together with designation of the number of irrigable acres in each forty acre tract or fractional part thereof.

(g) The population served by the amount of the claim, if the claim or contest relates to municipal use.

(h) The type or kind of industrial use if the claim or contest relates to such use.

(i) Any additional information that the Board may require.

In addition thereto the Board shall give public notice of such hearing by publication in a newspaper of general circulation in each county of the stream system in which the vested rights are to be determined, once each week for two consecutive weeks prior to the hearing; and the last notice shall be published at least thirty days prior to the date set for the hearing. The published notice shall contain the date and place of hearing together with a general description of the area in which vested rights to beneficial use of water are to be established or contested, and shall be directed to all persons interested or concerned, without specifically naming any person.

At the hearing the Board shall hear the evidence of any person interested or concerned and all such evidence shall be considered by

the Board in its determination of vested rights to beneficial use of water. As soon as possible thereafter, the Board shall make a final order determining the vested rights of such claimants who have made beneficial use of water as vested rights users, and the extent of their uses, and shall notify all such claimants and contestants as to the contents of such final order within sixty days after said hearing is completed.

Service of such final notice shall be deemed complete:

(a) Upon depositing a copy of such final order in the post office as registered or certified mail addressed to each vested right claimant and contestant whose name and address is known to the Board; and

(b) Upon the publication of an abstract of such final order once each week for two consecutive weeks in a newspaper of general circulation in each county of the stream system wherein claims of vested rights to beneficial use of water are determined; and

(c) Two or more copies of the final order shall be filed in the office of the County Clerk of each county of the area in which vested rights have been determined. Any person who considers himself aggrieved by the order of determination of his claim to, or contest of vested rights may appeal as provided by this Title. If no appeal is taken the determination concerning such claims or contests of such vested rights made by the Board pursuant to this Section, shall be conclusive and no action concerning those matters covered by the determination of the Board shall be brought at any time thereafter. Provided that any determination made pursuant to this Section shall not be deemed an adjudication of the relative rights between any vested rights holders with respect to the operation or exercise of their vested rights.

**Section 11: Hydrographic surveys.**—The Board shall make hydrographic surveys and investigations of each stream system and source of water supply in the State. The Board shall obtain and record all available data for the determination, development and adjudication of of the water supply of the State. It is authorized to cooperate with the agencies of the Federal Government in making similar surveys and investigations for the development and use of the water supply of the State, expending for such purposes any money available for the work of its department, and may accept and use, in connection with the operation of its department, the results of the work of the agencies of the Federal Government. Provided, that after the effective date hereof the making of such hydrographic survey shall not be a condition precedent to the granting of permits and licenses to appropriate water as authorized by Chapter 1 of Title 82, Oklahoma Statutes 1961, as now or hearafter amended or supplemented.

**Section 12: Adjudication of rights–Suit by Attorney-General.**–Upon the completion of such hydrographic survey of any stream system, the Board may if, in its opinion, the best interest of the Claimants to the use of water from such stream system will be served, deliver a copy thereof together with copies of date necessary for the determination of all rights to the use of the waters of such system, to the Attorney General who shall within Sixty days thereafter enter suit on behalf of the State for the determination of all rights to the use of such water, and shall diligently prosecute the same to a final adjudication. The cost of such suit, including the costs on behalf of the State, and of such surveys, shall be charged against each of the parties thereto in proportion to the amount of water rights allotted. Provided that after the effective date hereof neither the bringing of such suit nor an adjudication in such a suit shall be a condition precedent to the granting of permits and licenses, as authorized by Chapter 1 of Title 82, Oklahoma Statutes 1961, as now or hereafter amended or supplemented.

**Section 13: Parties to suit–Intervention–Orders.**–In any suit for the determination of rights to the use of the waters of any stream, brought pursuant to Section 12 of this Title, any person who is using or who has used water from the stream or who claims the right or who might claim the right to use water from the stream may be made a party to the suit. Any person who is using, or who has used or who claims the right to use water from the stream may intervene. No person not a party to the suit shall be bound by the decree therein but the rights determined between the parties thereto and their privities shall be bound in all subsequent litigation. When any such suit has been filed, the court may by its order, duly entered direct the Oklahoma Water Resources Board to furnish data necessary for the determination of the rights involved.

**Chapter 1, 1961, Title 82**
**IRRIGATION AND WATER RIGHTS**
**Surveys and the Determination of Rights**

**Section 14: Decree–Contents–Copies to be filed.**–Upon the adjudication of the rights of the use of the waters of a stream system, two or more certified copies of the decree shall be prepared by the clerk of the court, at the cost of the parties, and one copy shall be filed in the Office of the State Engineer and the other in the office of the register of deeds of each county in which such stream system is situated. Such decree shall in every case declare, as to the water right adjudged to each party, the priority, amount, purpose, place of use, and, as to water used for irrigation, the specific tracts of land to which it shall be appurtenant, together with such other conditions as may be necessary to define the right and its priority.

**Chapter 1, 1963 Supplement, Title 82.**
**WATER AND WATER RIGHTS**
**Irrigation and Water Rights**

**Section 21: Application for water rights.**—Any person, firm, corporation, State or Federal Governmental Agency or subdivision thereof, intending to acquire the right to the beneficial use of any water, shall, before commencing any construction for such purposes, or before taking the same from any constructed works, make an application to the Oklahoma Water Resources Board for a permit to appropriate in the form required by the rules and regulations established by the Oklahoma Water Resources Board. Such rules and regulations shall, in addition to providing the form and manner of preparing and presenting the application, require that such application state all data necessary for the proper description and limitation of the right applied for, as to the amount of water and periods of annual use, together with such information, maps, field notes, plans and specifications as may be necessary to show the method and practicability of the construction and the ability of the applicant to complete the same. All such maps, field notes, plans and specifications shall be made from actual surveys and measurements and shall be retained in the office of the Oklahoma Water Resources Board after the approval of the application. The Oklahoma Water Resources Board may require additional information not provided in the general rules and regulations in cases involving the diversion of twenty-five cubic feet of water per second, or more, or the construction of a dam more than ten feet high from the foundation. Prior to issuing rules and regulations, the Water Resources Board must give notice by publication in a newspaper of general circulation in the State of Oklahoma of its intention to issue such rules and regulations, furnish copies thereof to any interested party and set a public hearing. At such hearing any interested party shall have the right to appear and be heard either in person or by attorney on such proposed regulations.

**Chapter 1, 1961, Title 82.**
**IRRIGATION AND WATER RIGHTS**
**Use of Water**

**Section 22: Rules governing applications.**—The date of receipt of such application in the State Engineer's office shall be endorsed thereon and noted in his records. If the application is defective as to form or unsatisfactory as to feasibility or safety of plan, or as to the showing of the ability of the application to carry the construction to

completion, it shall be returned with a statement of the correction, amendments or changes required, within thirty days after its receipt, and sixty days shall be allowed for the re-filing thereof. If re-filed, corrected as required, within such time, the application shall, upon being accepted, take priority as of date of its original filing, subject to compliance with the further provisions of the law and the regulations thereunder. Any corrected application filed after the time allowed shall be treated in all respects as an original application received on the date of its re-filing: Provided, that the plans of construction may be amended, with the approval of the State Engineer, at any time; but no such change shall authorize an extension of time for construction beyond five years from date of the permit, except as provided in Section 3654; Provided, Further, that a change in the proposed point of diversion of water from a stream shall be subject to the approval of the State Engineer, and shall not be allowed to the detriment of the rights of others having valid claims to the use of water from said stream.

**Chapter 1, 1961, Title 82.**
**WATER AND WATER RIGHTS**
**Irrigation and Water Rights**

**Section 23: Notice of application.**—Upon the filing of an application which complies with the provisions of this Chapter and the rules and regulations established thereunder the Board shall instruct the applicant to publish within ninety days after the filing of the application, a notice thereof, at the applicant's expense, in a form prescribed by the Board in some newspaper of general circulation in the stream system, once a week for two consecutive weeks. Such notice shall give all the essential facts as to the proposed appropriation, among them, the places of appropriation and of use, amount of water, the purpose for which it is to be used, name and address of applicant and the time and place when the application will be taken up by the Oklahoma Water Resources Board for consideration. In case of failure to give such notice in accordance with the rules and regulations applicable thereto within the time required, or if such notice is defective, the application shall thereafter be treated as an original application as of the original date of the filing of the application, if proper notice shall be given within thirty days after the Board has given him notice of his failure to give effective and proper notice, and shall supersede any subsequent applications. Any interested party shall have the right to protest said application and present evidence and testimony in support of such protest.

**Section 24: Hearing on application.**—After the hearing on the application the Board shall determine from the evidence presented by the parties interested, from such surveys of the water supply as may be available, and from the records, whether there is unappropriated water available for the benefit of the applicant, and the use to which applicant intends to put the water is a beneficial use and does not interfere with the beneficial use of water by other appropriators. If so, the Board shall approve the application, by issuing a permit to appropriate water, and shall state in such permit the time within which the water shall be applied to a beneficial use. In the absence of appeal as provided by this Title, the decision of the Board shall be final. After the effective date hereof, neither the making of a hydrographic survey, nor the bringing of a suit; nor a judicial adjudication of water rights shall be a condition precedent to the approval of applications and giving of permits as provided for in Chapter 1, Title 82, Oklahoma Statutes 1961, as now or hereafter amended.

**Section 25: Rejection of application—Approval of application for lesser amount—Appeal.**—If, in the opinion of the Board, there is no unappropriated water available, it shall reject such application. The Board shall decline to order the publication of notice of any application which does not comply with the requirements of the law and the rules and regulations promulgated by it thereunder. Provided, (1) if an applicant can apply the water to the beneficial use or uses set out in his application, but can do so without waste only in an amount of water lesser than the amount applied for; or (2) if there is unappropriated water available, but in an amount lesser than the amount for which an application is made, and said applicant can apply such lesser amount to the beneficial use or uses set out in such application without waste; and if the applicant shall in writing indicate his desire that his application be approved for such lesser amount within fifteen days after notice of such proposed action shall have been mailed to him by the Board, then said Board may approve said application for said lesser amount, otherwise such application shall be disapproved; Provided, that an applicant who has received such a notice, and who has indicated his desire that his application be approved in such lesser amount as set out in such notice, as hereinabove provided, shall not be deemed to have waived thereby his right to appeal from the action of the Board in refusing to approve his application for the full amount applied for. Any applicant may appeal from such decision of the Board, or from any other decision of the Board as provided by this title. Denial of an application shall not preclude a subsequent application.

**Chapter 1, 1961, Title 82.**
**IRRIGATION AND WATER RIGHTS**
**Use of water**

**Section 26: Engineer to issue license.**—On or before the date set for the application of the water to a beneficial use, the State Engineer shall cause the works to be inspected, after due notice to the owner of the permits. Upon the completion of such inspection, the State Engineer shall issue a license to appropriate water to the extent and under the conditions of the actual application thereof to a beneficial use, but in no manner extending the rights described in the permit: Provided, that the inspection to determine the amount of water applied to a beneficial use shall be made at the same time as that of the constructed work, if requested by the owner, and if such action is deemed proper by the State Engineer.

**Section 27: Assignment of license—Transfer of title.**—Any permit or license to appropriate water may be assigned, but no assignment shall be binding, except upon the parties thereto, unless filed for record in the office of the State Engineer. The evidence of the right to use water from any works constructed by the United States, or its duly authorized agencies shall in like manner be filed in the office of the State Engineer upon assignment: Provided, that no right to appropriate water for irrigation purposes shall be assigned, or the ownership thereof in anywise transferred, apart from the land to which it is appurtenant, except in the manner specially provided by law: Provided, Further, that the transfer of title to land in any manner whatsoever shall carry with it all rights to use of water appurtenant thereto for irrigation purposes.

**Section 28: Engineer to supply registers with information.**—The State Engineer shall forward to the register of deeds of each county copies of all records, permits and licenses to appropriate water in or relating to his county, and shall advise him of all acts and decisions of the State Engineer's office affecting the apportionment of waters in such county.

**Section 29: Referees in water suit.**—In any water suit the court may appoint a referee or referees, not exceeding three, to take testimony and report upon the rights of the parties, as in other equity cases.

**Section 30: Attorney general and county attorney to be advisers.**—The Attorney-General and the county attorney of the county in which legal questions arise, shall be the legal advisers of the State Engineer, and shall perform any and all legal duties necessary in connection with his work, without other compensation than their salaries

as fixed by law, except when otherwise provided.

**Section 31: Measurement of water.**—The standard of measurement of the flow of water shall be the cubic foot per second of time; the standard measurement of the volume of water shall be the acrefoot, being the amount of water upon an acre covered one foot deep, equivalent to forty-three thousand five hundred sixty cubic feet.

**Section 32: Time for putting water to beneficial use—Priority.**—When any person files an application for the appropriation of water for beneficial use with the Oklahoma Water Resources Board in conformity with 82 O.S. 1951, Sections 21 and 22, such person shall not lose his priority date of application if:

(a) Within two (2) years after filing an application with the Board, the applicant has begun construction of the works to put the water applied for to beneficial use.

(b) Within three (3) years after the filing date of the application, applicant has put twenty-five percent (25%), or more, of the water applied for to beneficial use.

(c) Within four (4) years after the filing date of the application, applicant has put seventy-five percent (75%), or more, of the water applied for to beneficial use.

(d) Within five (5) years after the filing date of the application, applicant has put one-hundred percent (100%) of the water applied for to beneficial use.

Provided, however, that if the applicant has put to beneficial use water applied for in a lesser amount than specified in his application at the end of the five (5) year period herein provided, then his priority date shall be applicable only to the amount of water actually put to beneficial use.

Provided further, that if any person has been adjudicated any rights to the use of any waters in this State by any court of this State, he shall retain such rights only in compliance with the foregoing subsections (a), (b), (c) and (d) of this Section after the effective date of this Act.

Provided further, that any water that has not been put to a beneficial use, either through filing an application or by adjudication as provided in this Section, shall be declared unappropriated water and subject to appropriation.

Nothing in this Act shall be deemed to re-establish any right to the use of any water which has been lost by failure to use same or by forfeiture prior to the effective date of this Act.

**Section 33: Amount of water allowed.**—In the issuance of permits to appropriate water for irrigation or in the adjudication of rights to the use of water for such purpose, the amount allowed shall not be in

excess of the rate of one cubic foot of water per second for each seventy acres, or equivalent thereof, delivered on the land, for a specified time in each year.

**Section 34: Water right may be severed and transferred.**—All water used in this State for irrigation purposes shall remain appurtenant to the land upon which it is used: Provided, that if for any reason it should at any time become impracticable to beneficially or economically use water for the irrigation of any land to which the right of use of same is appurtenant, said right may be severed from said land, and simultaneously transferred, and become appurtenant to other land, without losing priority of right theretofore established, if such change can be made without detriment to existing rights, on the approval of an application of the owner to the State Engineer. Before the approval of such application the applicant must give notice thereof by publication once a week for four weeks in a newspaper of general circulation in the stream system in which the tracts of land are located, in the form required by the State Engineer. Upon the receipt of the proofs of publication, the State Engineer shall render his decision thereon in writing, which shall be final, unless some party interested in the same source of water supply shall, within sixty days, bring appropriate action in the district court of the county in which the land is located, for a review of such decision. If the owner of the land to which water has become appurtenant abandons the use of such waters upon such land, said waters shall become public waters, subject to general appropriations.

**Section 35: Use of water for other than appropriated purpose.**—Any appropriator of water may use the same for other than the purposes for which it was appropriated, or may change the place of diversion, storage, or use, in the manner under the conditions prescribed in Section 3664.

**Chapter 1, 1961, Title 82.**

**IRRIGATION AND WATER RIGHTS**

**Construction of Water Works**

**Section 52: Notice of completion—Inspection.**—On the date set for the completion of the work, or prior thereto, upon notice from the owner that the work has been completed, the State Engineer shall cause the work to be inspected after due notice to the owner of the permit. Such inspection shall be thorough and complete, in order to determine the actual capacity of the works, their safety and efficiency. If not properly and safely constructed the State Engineer may require the necessary changes to be made within a reasonable time, not to exceed six months, and shall not issue his certificate of completion until such changes are made. Failure to make such changes shall cause the postponement of the priority under the permit for such time as may elapse from the date for completing such changes until made to the satisfaction of the State Engineer, and applications subsequent in

time shall have the benefit of such postponement of priority: Provided, that for works involving the diversion of not exceeding twenty cubic feet of water per second or a dam not exceeding ten feet in extreme height from the foundation, the State Engineer may, in his discretion, accept the report of inspection by a reputable hydraulic engineer.

**Section 53: Certificate of completion.**—When the works are found in satisfactory condition, after inspection, the State Engineer, shall issue his certificate of completion of construction, setting forth the actual capacity of the works and such limitations upon the water right as shall be warranted by the condition of the works, but in no manner extending the rights described in the permit.

**Section 54: Unsafe works to be changed—United States works not subject to inspection.**—If the State Engineer shall in the course of his duties, and that any works used for the storage, diversion or carriage of water are unsafe and a menace to life and property, he shall at once notify the owner or his agent, specifying the changes necessary and allowing a reasonable time for putting the works in safe condition not exceeding three months. Upon the request of any party, accompanied by the estimated cost of inspection, the State Engineer shall cause any alleged unsafe works to be inspected. If they shall be found unsafe by the State Engineer, the money deposited by such party shall be refunded, and the fees for inspection shall be paid by the owner of such works; and, if not paid by him within thirty days after the decision of the State Engineer, shall be a lien against any property of such owner, to be recovered by suit instituted by the county attorney of the county at the request of the State Engineer. The State Engineer may, when in his opinion necessary inspect any works under construction for the storage, diversion, or carriage of water, and require any changes necessary to secure their safety; and the fees for such inspection shall be a lien on any property of the owner and shall be subject to collection as provided herein: Provided, that any works constructed by the United States, or by its duly authorized agencies, shall not be subject to such inspection while under the supervision of officers of the United States.

**Section 55: Use of unsafe works a misdemeanor.**—The use of works for the storage, diversion or carriage of water at any time after an inspection thereof by the State Engineer and receipt of notice from him that the same are unsafe, for the purpose for which they are used, until the receipt of notice from him that in his opinion they have been made safe, shall be a misdemeanor and it shall be the duty of the State Engineer to give prompt notice to the county attorney of the county in which such works are located in case of such violation. The county attorney shall at once proceed against the owner, and all parties responsible therefor.

**Section 56: Extension of time for completion or construction of works.**—The Oklahoma Water Resources Board may extend the time for completion or construction of works for placing the water to beneficial use to two (2) years beyond the time allowed in Section 1 of this Act for good cause shown, such as engineering difficulty or other valid reason over which the applicant has no control, or in the case of National emergency when materials for construction of works are not available additional time may be granted beyond the two-year extension to cover the period of such emergency.

**Section 57: Headgates and measuring devices.**—Every ditch owner shall construct and maintain a substantial headgate at the point where the water is diverted, and shall construct a measuring device, of a design approved by the State Engineer, at the most practicable point or points for measuring and apportioning the water as determined by the State Engineer. The State Engineer may order the construction of such device by the ditch owner, and if not completed within twenty days thereafter, the State Engineer shall refuse to deliver water to such owner. The taking of water by such ditch owner until the construction of such device and the approval thereof by the State Engineer, shall be a misdemeanor. Such devices shall be so arranged that they can be locked in place and when locked by the watermaster or his authorized agent, for the measurement or apportionment of water, it shall be a misdemeanor to interfere with, disturb or change the same, and the use of water through such device after having been interfered with, disturbed or changed, shall be prima facie evidence of the guilt of the person benefited by such interference, disturbance or change.

**Section 58: Injuring waterworks—Penalty—Entry by watermasters.**—Any person, association or corporation interfering with or injuring or destroying any dam, headgate, weir, bench-mark or other appliance for the diversion, storage, apportionment or measurement of water, or for any hydrographic surveys, or who shall interfere with any person or persons engaged in the discharge of duties connected therewith, shall be guilty of a misdemeanor, and shall also be liable for the injury or damage resulting from such unlawful act. The watermaster or any authorized assistant, within his district shall have power to arrest any person offending against the provisions of this section, and deliver him to the nearest peace officer of the county. It shall be the duty of the person making the arrest to make complaint at once before the court having jurisdiction thereof. The State Engineer, the watermasters and their authorized assistants and agents may enter upon any private property for the performance of their respective duties, doing no unnecessary injury thereto.

**Section 59: Waste of water–Unlawful construction of works.**–The unauthorized use of water to which another person is entitled, or the wilful waste of water to the detriment of another shall be a misdemeanor. It shall also be a misdemeanor to begin or carry on any construction of works for storing or carrying water until after the issuance of a permit to appropriate such waters except in the case of construction carried on under the authority of the United States.

**Section 60: Bridges on highways.**–The owner of any ditch, canal or other structure for storing or carrying water, shall construct and maintain a substantial bridge where the same crosses any highway or public traveled road, not less than fourteen feet wide; or reconstruct the road in a substantial manner and in a convenient location for public travel. Any violation of the provisions of this section shall be a misdemeanor. The county commissioners shall be authorized to construct such bridge or road, if not built by the owner of the work within three days after the obstruction of the road, and may recover the expense thereof and costs in a civil suit, unless the same shall be paid by the owner of the works within ten days after demand therefor. The county commissioners may make reasonable requirements as to the size and character of such bridges along public highways, or for necessary reconstruction of roads, and upon failure to comply therewith, may do the necessary work and collect the expense thereof and costs as hereinbefore provided. After the construction of such bridge or road as part of a public highway, the same shall be maintained by the county commissioners.

**Section 61: Obstruction of waterworks.**–Whenever any appropriator of water has the right of way for the storage, diversion or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of the works, or prevent convenient access thereto. Any violation of the provisions of this section shall be a misdemeanor.

## Chapter 1, 1961, Title 82.
## IRRIGATION AND WATER RIGHTS
### Water Districts and Watermasters

**Section 71: State to be divided into water districts.**–The State Engineer shall, from time to time, as may be necessary for the economical and satisfactory apportionment of the water, divide the State in conformity with the drainage areas, into water districts to be designated by name, and to comprise, as far as possible, one or more distinct stream systems in each district. The districts may be changed from time to time as may in his opinion be necessary for the

economical and satisfactory apportionment of the water.

**Section 72: Watermasters–Appointment and duties.**–The State Engineer may, with the approval of the Governor appoint a watermaster for each district, who may be removed by the State Engineer. Each watermaster shall have immediate charge of the apportionment of the waters in his district under the general supervision of the State Engineer, and he shall so apportion, regulate and control the waters of the district as will prevent waste.

**Section 73: Appeal from watermaster.**–Any person may appeal from the acts or decisions of the watermaster to the State Engineer, who shall promptly and at a stated time and place, to be fixed by him, upon due notice to the parties hear and determine the matter in dispute, and his decision shall be final, unless an appeal is taken to the courts within thirty days.

**Section 74: Compensation of watermaster.**–The watermaster shall be allowed pay at the rate of three dollars per day and actual and necessary expenses in the performance of his duties. He may employ assistants in case of emergency, upon the specific authority of, and at the rates of pay authorized by the State Engineer, such employment to continue only during the existence of the emergency. The watermasters and the assistants employed by him shall be paid by the county, upon accounts approved by the State Engineer. If the district is in more than one county, each county shall pay its proportionate part of each account rendered. The accounts of the watermaster shall in all cases specify the distribution of the amounts charged, based upon the amount of work performed as to each ditch and water right, showing the charges to be allotted to each owner. The amounts paid by the counties shall be a lien upon the property of the water users and ditch owners, in accordance with the distribution thereof, as shown by the accounts of the watermaster, and shall be collected in the manner provided by law for the collection of taxes.

**Section 75: Report of watermaster to State engineer.**–Each watermaster shall report to the State Engineer as often as may be deemed necessary by the State Engineer, as to the amount of water needed to supply the requirements of the works in his district, the amount available, the works which are without their proper supply, the supply required during the period preceding his next regular report, and such other information as the State Engineer may require. The State Engineer shall give directions for correcting any errors of apportionment that may be shown by such reports.

**Chapter 1, 1961, Title 82.**
**IRRIGATION AND WATER RIGHTS**
**Supervision of Apportionment**

**Section 81: Duties of state engineer.**—The State Engineer shall have supervision of the apportionment of water according to the licenses issued by him and the adjudication of the courts. He shall, subject to the approval of the Governor, prepare and publish such general rules and regulations as may be necessary for the proper division and apportionment of the waters of the several stream systems of the State.

**Section 82: Records of engineer to be public.**—The records of the office of the State Engineer shall be public records, shall remain on file in his office and shall be open to the inspection of the public at all times during business hours. Such records shall show in full all permits, certificates of completion of construction, and licenses issued together with all actions thereon and all actions or decisions of the State Engineer affecting any rights or claims to appropriate water or to locate any irrigation works for the reclamation of land. Certified copies of any records or papers on file in the office of the State Engineer shall be evidence equally with the originals thereof; and when introduced as evidence shall be held as the same validity as the originals.

**Section 83: State engineer to make rules and regulations—Annual report.**—The State Engineer shall make all necessary general rules and regulations to carry into effect the duties devolving upon his office and may change the same at his discretion. It shall, furthermore, by the duty of the State Engineer to render annually a report to the Governor, setting forth in detail, the operations of his office, including an itemized account of the expenses of the office.

**Chapter 1, 1961, Title 82.**
**IRRIGATION AND WATER RIGHTS**
**Federal Water Works and Associations**

**Section 91: Appropriation of water by United States—.**Whenever the proper officers of the United States, authorized by law to construct works for the utilization of waters within the State, shall notify the Oklahoma Water Resources Board that the United States intends to utilize certain specified waters, the water so described, and unappropriated at the date of such notice, shall not be subject to further appropriation under the laws of this State, for a period of three (3) years from the date of said notice, at which time the proper officers of the United States shall file plans for the proposed works in the

office of the Oklahoma Water Resources Board for its information, and no adverse claim to the use of the waters required in connection with such plans, initiated subsequent to the date of such notice, shall be recognized under the laws of the State, except as to such amount of the water described in such notice as may be formally released in writing by an officer of the United States, thereunder duly authorized; provided, that in case of failure to file plans for the proposed work within three (3) years, as herein required, the water specified in the notice given by the United States to the Oklahoma Water Resources Board shall become public water, subject to general appropriation; provided further that in case the proposed work as detailed in the plans to be filed as herein required is not commenced and continued with due diligence within eight (8) years from the date of filing of the plans with the Oklahoma Water Resources Board, the water specified in the request for withdrawal shall become public water subject to general appropriation; provided, that when actions relating to project authorization for initiation of construction are delayed pending actions of the Congress, or water right adjudications by the State, or other valid and good reasons, the Oklahoma Water Resources Board may extend the period beyond eight (8) years within which work may be commenced as provided herein by making a finding of fact and filing a report in the office of the Oklahoma Water Resources Board that it is the opinion of the Board that releasing the waters involved to general appropriation may be detrimental to the best interest of the State and the area involved. Such findings shall state specifically the additional time to be granted within which proposed work on the project, or projects, covered by plans, shall be commenced.

**Section 93: Sale or lease of state lands in areas irrigated by United States.**—No lands belonging to the State or subject to its control, within the areas to be irrigated from works constructed or controlled by the United States or its duly authorized agencies shall hereafter be sold or leased except in conformity with the classification of farm units by the United States, and the title of such lands shall not pass from the State, until the applicant therefor shall have fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase or lease of State lands within the limits of such withdrawal shall be accepted, except upon the conditions prescribed in this section. Any state lands needed by the United States for irrigation works shall be sold to the United States at the lowest price authorized by law.

**Section 94: Federal associations exempt from taxation.**—Any water users' association which is organized in conformity with the requirements of the United States under the Reclamation Act of June 17, 1902, and which, under its articles of incorporation is authorized to furnish water only to its stockholders, shall be exempt from the payment of any incorporation tax, and from the payment of any annual franchise tax; but shall be required to pay, as preliminary to its incorporation, only a fee of ten dollars for the filing and recording of its articles of incorporation and the issuance of certificate of incorporation.

**Section 95: Federal associations—County to record books, etc.**—The county commissioners are hereby authorized to accept from water users associations organized in conformity with the requirements of the United States under the Reclamation Act, books containing printed copies of their articles of incorporation and forms of subscription to stock, and to use such books for recording the stock subscriptions of such association; and the charges for the recording thereof shall be made on the basis of the number of words actually written therein.

**Section 96: Reimbursement for prior work by Federal associations.**—In case a prior filing upon any unappropriated water or waters, or upon any site for the construction of diversion works or any reservoir, dam or other irrigation works, has been made by any person, association or corporation, any water users' association organized in conformity with the requirements of the United States, under the Reclamation Act of June 17, 1902, shall be and is hereby authorized and empowered to reimburse such person, association or corporation for any or all actual outlays or moneys expended in making necessary surveys securing titles to sites and right of way, either by condemnation under right of eminent domain or by purchase and for all work of construction actually done upon such irrigation system, together with interest upon the same from date of expenditure to time of such settlement: Provided, that any dispute between such person, association or corporation and such water users' association as to the reasonable cost of such surveys and construction work, shall be referred to the State Engineer for determination, and such determination as referee shall be final.

**Section 97: Appropriation of waters on streams under withdrawal by United States.**—Any waters heretofore withdrawn under 82 O.S., 1951, Section 91, or hereinafter withdrawn by the United States as provided by Section 1 of this Act in the stream systems of the State shall be only those waters necessary for the plans filed for the projects economic justification and water supply. Any remaining portion of the

waters of such stream system which are not required for the project as planned by the United States and for which plans are duly filed with the Oklahoma Water Resources Board in accordance with this Act, shall be subject to general appropriation as provided by State law; provided further that any withdrawal notice by the United States and the filing of project plans by the United States prior to the adoption of this Act shall be considered as effective and continued in full force to the maximum time allowed in Section 1 from the effective date of this act.

**Section 98: Extension of period of withdrawal under national emergency.**—In case of National emergency such as war, during periods when materials for the construction of projects as herein contemplated by the United States may not be available, such periods of emergency shall not be chargeable to the maximum period provided for the construction of projects initiated under this Act.

**Chapter 1, 1961, Title 82.**
**IRRIGATION AND WATER RIGHTS**
**Miscellaneous Provisions**

**Section 101: Surplus Water.**—The owner of any works for the storage, diversion or carriage of water, which contained water in excess of his needs for irrigation or other beneficial use for which it has been appropriated, shall be required to deliver such surplus, at reasonable rates for storage, or carriage, or both, as the case may be, to the parties entitled to the use of the water for beneficial purposes. In case of the refusal of such owner, to deliver any such surplus water at reasonable rates as determined by the State Engineer, he may be compelled to do so by the district court for the county in which the surplus water is to be used.

**Section 102: Seepage waters.**—In the case of seepage water from any constructed works, any party desiring to use the same shall make application to the State Engineer, as in the case of unappropriated water, and such party shall pay to the owner of such works, reasonable charge for the storage or carriage of such water in such works, if the appearance of such seepage water can be traced beyond reasonable doubt to the storage or carriage of water in such works. The State Engineer shall not issue a permit to appropriate such seepage waters until an agreement for the payment of such charges shall have been entered into by the said parties.

**Section 103: Liens.**—All liens on land, provided for in this Chapter, shall be superior in right to all mortgages or other incumbrances placed upon the land and the water appurtenant thereto or used in connection therewith, after the passage of this Act.

**Section 104: Violations of chapter.**—All violations of the provisions of this Chapter, declared herein to be a misdemeanor, shall be punished by a fine not exceeding two hundred and fifty dollars or less than twenty dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment; and any justice court of the county in which such misdemeanor has been committed shall have jurisdiction thereof.

**Chapter 4, 1961, Title 82,**
**CONSERVATION IN GENERAL**
**Creation of State Board and General Provisions**

**Section 453: Expenditures of board—Payment of claims.**—The expenditures of the said commission shall be under the control and supervision of the said commission, and all claims against this commission shall be paid on its itemized voucher forms, prepared by the commission, and sworn to by the claimant, and all such claims, when duly signed and sworn to, shall be audited by the commission, and upon final approval vouchers which are payable from the fund appropriated for said commission, shall be forwarded to the Auditor of the State, who shall draw warrants therefor, and said warrants shall be paid by the State Treasurer from the appropriations made therefor.

**Section 454: Audit of books by State Examiner and Inspector.**— The State Examiner and Inspector shall audit the books of the commission annually between the 15th day of November and the 31st day of December, of each year, and his report of such audit shall be made in triplicate, one copy thereof to be filed with the Governor, one copy with the State Auditor, and one with the Commission, and said copies of the report shall be filed in each of the departments here named on or before the 31st day of December of each year.

**Section 455: Conservation of water, etc., as public necessity.**—The retention of rainfall and the capture and detention and distribution of flowing surface and subterranean water, and conservation of water, soil and promotion of moisture, in the State of Oklahoma, in any lawful available and economical way and manner is hereby recognized and declared to be and is a public necessity for the preservation of the habitability, productivity, health, comfort, sanitation, convenience and public utility of the State of Oklahoma and the people thereof.

**Section 456: Purposes and means of conservation.**—In the consummation of said conservation, it is hereby declared a public necessity to promote, build and encourage the building of lakes, reservoirs, ponds, the terracing of lands, the prevention of wind and water erosion, the promotion of contour cultivation of lands, the irrigation of

lands, and the saturation and storage of water in lands, and encourage the seeding of waste, abandoned or eroded lands to water-conserving and erosion preventing plants, trees and grasses and such other and further methods as shall economically effect such conservation.

**Section 457: Contracts with landowners–Cooperation with Soil Conservation Board–Participation in water conservancy districts.**–Contracts with landowners within the State may be made for:

(a) Construction of private pond.

(b) Terracing.

(c) For the contour cultivation.

(d) For plantin, grassing and foresting lands within the State upon such basis as may be agreed upon; and the Commission shall adopt such policies and regulations as to encourage like enterprises by private landowners.

(e) The Commissioners of the Land Office, the State Board of Public Affairs, the State Planning and Resources Board, the State Game and Fish Department, and any other agency or department of the State of Oklahoma having authority to administer upon lands owned by the State, either in its governmental capacity, in trust or otherwise, are hereby required to cooperate with the State Soil Conservation Board and participate in water conservancy districts upon the same basis as individual private landowners. To defray the expenses of such participation, the several commissions, departments and agencies of the State are hereby authorized and required to expend any funds in the hands of such commission, department or agency, which funds may properly be spent for maintenance or improvements upon the lands administered by them.

**Section 458: Supervisory and regulatory powers of board.**–With respect to all works installed by, controlled by, or in which the said Commission shall have participating interest or control, the Conservation Commission shall have the supervisory and regulatory and protective and administrative powers conferred by existing laws on directors of Conservancy Districts as to Conservancy Districts.

## Chapter 4, 1961, Title 82
## CONSERVATION IN GENERAL
### *Powers of the State Board and Related Matters*

**Section 481: Board to have powers and duties of State Engineer, etc.**–The powers, duties and authorities heretofore conferred upon the State Engineer and State Highway Engineer, pertaining to water, drainage, irrigation and water control, be and the same are hereby conferred upon and transferred to the Oklahoma Planning and Resources Board, and all such records of said Engineers are hereby transferred to said Board.

**Section 482: Powers of board enumerated.**—The said commission is hereby vested with the duties and powers necessary and proper to enable the commission to fully and carefully carry out the object of this Act and to promote the control of floods in the State and diminish their destruction and promote the conservation and use of waters in the State to the protection of public and private property and to the development of agricultural and industrial development of the State and in addition thereto, shall have the following specific powers and duties:

(1) Having supervision of the lakes, canals, ponds, ditches and streams of the State which are created, improved and maintained, in whole or in part, by the aid of federal, state or county money or moneys derived by assessment, charge or tax under and by virtue of the authority of the State so far as such supervision is consistent with the Acts of Congress of the United States relating thereto.

(2) Prescribe rules and regulations not inconsistent with this Act or other laws for the orderly conduct of their business.

(3) Investigate and determine upon the best methods of flood control and water conservation and use in the different sections of the State for the Agricultural and Industrial development of the State and as to the best method of construction and maintenance of necessary structures in the State to accomplish that purpose.

(4) Aid at all times counties, cities and municipal corporations in the state in promoting and developing flood control and water conservation in the State.

(5) The said Commission shall have authority to negotiate contracts with the Federal Government or any department or bureau thereof, or with any State in this Union for the purpose of obtaining assistance and co-operation in the accomplishment of the purpose of flood control and water conservancy and use in the State, and to that end may match funds with such government or other state upon such terms as shall be agreed upon and approved by the Governor of the State; with the limitation, that contracts with other states for the division and apportionment of the cost and use of the water controlled by interstate projects shall be submitted to and approved by the Legislature of the State and the Governor of the State, and Congress and the President of the United States conformable to the State and Federal Constitutions.

(6) To determine and map proposed conservancy and water improvement districts for preliminary purpose of estimate and cost, and effect, of a proposed conservancy district, for the purpose of submitting the question of the creation of said proposed district.

(7) To supervise, conserve and develop the water power of the State of Oklahoma, granting permission for the development of such power, making such reasonable rules and regulations governing the

development and operation and distribution of such power except as may be otherwise provided by law, and to take such steps as may be necessary to encourage the development of water power within said State, and to undertake by, and on behalf of the State the development of water power when private development may be inadequate or unsatisfactory on such terms as may be hereinafter provided by the Legislature, and to exercise such further powers and duties as may be directed hereafter by the Legislature of this State.

**Section 483: Water power industry—Duties of board—Supervision of business and accounts—State water projects.**—(a) This Commission is hereby authorized and empowered to make investigations and to collect and record data concerning the utilization of the water resources of any region to be developed, the water power industry and its relation to other industries and to interstate and foreign commerce, and concerning the location, capacity, development costs, and relation to markets of power sites, and whether the power from dams that might be erected by the State can be advantageously used by the State for its public purposes, and where there is a fair value of such power, to the extent the Commission may deem necessary or useful.

(b) It shall be the duty of said Commission to require of all licensees, or holders of permits, for the erection of water power within the State of Oklahoma, to furnish said Commission, and also the Corporation Commission of the State of Oklahoma, a full and complete statement of all the costs of construction of any hydro-electric plant, with itemized statement including the cost of preliminary surveys, and also each and every item of expenditure, in the construction and equipment of said plant or plants, and it shall be the duty of every holder of a license of permission to construct and operate such hydro-electric plant, to furnish such information upon request, and said information shall be under oath, and shall be furnished monthly, when surveys or construction of such plant or plants is begun; and any addition to said plant, after its construction, or any betterment, and of the costs of right-of-way, water rights, land or interest in lands, the licensee shall grant to this Commission, or to its duly authorized agent or agents, at all reasonable times, free access to such project, addition or betterment, and to all maps, profiles, contracts, reports of engineers, accounts, books, records and all other papers and documents relating thereto. This information shall be required, not only of licensees and holders of permits of projects made by this Commission hereinafter, but to all projects that may have been begun before but not completed at the time of the passage of this Act.

(c) Said Commission shall have authority to prescribe rules and

regulations for the establishment of a system of accounts and for the maintenance thereof, by licensees or holders of permits hereunder; to examine the books and accounts of said licensees at any time; to require them to submit at such time or times as the Commission may require, statements and reports including full information as to assets and liabilities, capitalization, net investment and reduction thereof, gross receipts, interest due and paid, depreciation and other reserves, cost of project, cost of maintenance and operation of the project, cost of renewals and replacements of the project works and as to the depreciation of the project works and as to the production, transmission, use and sale of power; also to require any licensee to make adequate provision for currently determining said cost and other facts. All such statements and reports shall be made by oath, unless otherwise specified, and in such forms and on such blanks as the Commission may require. Any person for the purpose of deceiving, who makes or causes to be made any false entry in the books or in the accounts of such licensee; and any person, who for the purpose of deceiving, makes or causes to make any false statement or report in response to request, or order or direction from the Commission for the statements and report herein referred to shall, upon conviction, be fined not more than Two Thousand ($2,000.00) Dollars, or imprisoned not more than five years, or both.

(d) The Commission may, in its judgment, when the public interest may require, develop any project for and on behalf of the State, and its surveys, reports, plans and estimates of cost, and such other information as it may deem necessary, shall be submitted to the Legislature from time to time.

(e) No voluntary transfer of any license, or of the rights, granted by this Commission, shall be made without the written approval of the Commission; and any successors or assigns of the rights of such licenses, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the conditions of the license under which such rights are held by such licensee, and also subject to all the provisions and conditions of this Act, to the same extent as though such successor or assign were the original licensee thereof.

(f) Combinations, agreements, arrangements, or understanding, express or implied, to limit the output of electrical energy, to restrain trade, or fix, maintain, or increase prices for electrical energy or service are hereby prohibited.

**Section 484: Water power projects—State may take over—Rates—Taxes.**—The right of the State in its natural resources is hereby declared to be paramount to their rights, and after any plant shall have been constructed by a private enterprise the State may, by legislative

enactment, revoke the license and take over and operate for, and on behalf of the State, such project or projects, but no such action shall be taken by the Legislature except on intervals of ten (10) years after the completion of any such project, and the owners of said project shall be reimbursed for their original investment, plus eight (8%) percent, per annum, on their investment less its net earnings.

(a) The fixing of rates for electrical energy shall be fixed by the Corporation Commission as required by law, and it shall be the duty of this Commission to aid and assist the Corporation Commission in fixing such rate or rates.

(b) Any holder of a license or permit at this time, or that may hereafter acquire such, shall in lieu of ad valorem taxes, pay to the State of Oklahoma a certain percentage of net income as follows: After deducting from gross income reasonable expenses of operation, including salaries and wages, together with five per cent (5%) of the cost of the plant for depreciation, and not to exceed eight per cent (8%) for interest on bonds issued, which amount of bonds shall not exceed seventy-five per cent (75%) of the cost of said plant; the aggregate of said sums shall be deducted from gross income and the sum remaining shall be net income for the purposes of this Act and of said net income the holder of such license or permit, shall pay twenty-five per cent (25%) of said net income to the State of Oklahoma, ten per cent (10%) of which shall be paid into the common school fund and ten per cent (10%) for maintenance of educational institutions other than the common and high schools, and five per cent (5%) shall be returned to the county or counties, where such project or projects are located to be equitable divided by the State Board of Equalization, between or among such counties according to the damage by inundation that may have been suffered by either of any of such counties. The remaining seventy-five per cent (75%) of said net income shall be retained by the licensee.

(c) No holder of any project hereunder may inflate salaries or wages or create unnecessary expense, whereby net income shall be diminished.

(d) The Legislature may alter this plan of taxation, or may abolish same altogether and direct that such project, or projects, as may be covered by this Act, be taxed as other property in this State.

**Section 485: Projects for reclamation and flood control–Federal assistance–Distribution of cost.**–It is hereby provided that in any project for reclamation and flood control, which covers practically an entire stream system, shall not be initiated unless the said district shall have assurance from the Federal Government that not less than fifty per cent (50%) and not more than seventy-five per cent (75%) of the cost of construction of said project, shall be

borne by the United States Government and not more than thirty per cent (30%), no less than fifteen per cent (15%) shall be borne by the State of Oklahoma, and not more than twenty per cent (20%), nor less than ten per cent (10%) shall be borne by the property owners of said district.

**Section 486: Additional powers of board.**—The said Conservation Commission shall have and is hereby authorized to exercise the following additional powers, rights, privileges and functions, to those now possessed;

(a) To control, store and preserve within the boundaries of the State, all waters in the State which may be stored within the State in any manner whatsoever, for any useful purpose, under the authority and control of said Commission, and to use, dispose and sell the stored water within the boundaries of the State, except as to such waters duly appropriated to private, municipal or public use;

(b) To control rivers, creeks, ponds and lakes, to prevent or aid in the prevention of, damage to person or property from such harmful waters within the State of Oklahoma; the Conservation Commission is authorized to adopt and apply the necessary methods and means to purify and render sanitary all water impounded by or under its authority and also to prevent the contamination or pollution of any and all reservoirs, ponds, lakes, creeks, and rivers and to call upon the Attorney General to bring any suit or action by the Commission deemed necessary to effect this object;

((c) To afforest and reforest, and to aid in the afforesting and reforesting, in the watershed areas of the State and to prevent, and to aid in the prevention of soil erosion and floods within said State;

(d) To acquire by gift or gratuitous grant, any and all property, real, personal or mixed, or any estate, or interest therein, situated within the State of Oklahoma, necessary to the exercise of the powers, rights, privileges, and functions conferred upon said Commission by this Act and by other laws; and shall have the right to acquire personal property by purchase, lease or gift, and to hold and use the same for the purposes of this and other Acts; and to acquire by gift or gratuitous grant any property without the boundaries of this State, including easements or rights of use and to use and hold the same with the consent of the foreign states for the purposes of this and other Acts;

(e) To sell any personal property held by the Commission when no longer needed in such manner as provided by law;

(f) To construct, extend, improve, maintain, and reconstruct or cause to be constructed, extended, improved, maintained and reconstructed, and to use and operate any and all facilities of any kind necessary or convenient to exercise of such powers, rights, pri-

vileges, and functions by said Commission possessed;

(g) To adopt, use and alter a Commission seal;

(h) To make Rules and Regulations for the orderly conduct and exercise of its powers;

(i) To appoint agents and employees, to prescribe their duties, and fix their compensation at adequate and reasonable amounts as hereinafter limited by this Act;

(j) To make contracts and to execute instruments necessary or convenient to the exercise of the powers, rights, privileges and functions conferred upon it by law, for the accomplishment of its object;

(k) Said Commission shall have the power, in executing its powers to accept grants or gratuities from the Federal Government or from any corporation, authority, or agencies created and designated by the United States of America, or the President thereof, under such rules and regulations as may be prescribed by the Federal Government or any of its agencies, herein referred to in the matter of participation of the Federal Government with the State upon any project, or projects, undertaken according to the provisions of this Act;

(l) To do any and all other Acts or things necessary or convenient to the exercise of the powers, rights, privileges or functions upon it conferred by this Act;

In case any person, partnership or individual private or public corporation by any project organized under this Act, shall consider itself or himself injuriously affected in any manner whatsoever by any act performed by any official or agent of said Conservation Commission, project or district, or by the execution, maintenance or operation of the official plan, it shall have the right to sue said Conservation Commission for the damage caused. In all suits in any court for damages, whether brought for or against such project or district, the same shall be brought in the name of the Conservation Commission and said suit shall be filed in the judicial district in which said project or district is located and shall be, in all suits brought by said district, under the direction of said Board of Directors of said Conservation Commission and in all suits against said Conservation Commission, service of summons shall be issued and served on the Chairman of the Board of Directors of said Conservation Commission, which service shall be sufficient to bind Conservation Commission of the State of Oklahoma. The venue of all actions affecting Real Estate or any use or interest therein, or damage thereto, or condemnation thereof, shall be the county where the land or some portion thereof is located.

**Section 487: Sale of water by board.**—The Board may sell, and shall establish and collect rates and other charges for the sale, or use of water, water connections and other services sold, furnished or sup-

plied by the Commission which fees and charges shall be reasonable and non-discriminatory, provided, that such collected fees shall be deposited in the General Revenue Fund of the State.

**Section 488: Impounding of streams—Duties of board.**—It shall be the duty of said Commission, and the Commission is hereby directed to begin the capture and impounding of flowing streams as near as practicable at the head of the stream sought to be captured, and shall construct canals, pipes, conduits, etc., to conduct such conserved waters to the uplands, and there impound and/or distribute the same into the soil, if not otherwise utilized, to the end that the greatest restoration of the ground water and water supply be availed; all in accordance with the best engineering science, skill and economic result, provided that before said Commission shall cause to be erected or constructed any dam, pond, or reservoir impounding water forming any lake, pond or reservoir, it shall be the duty of the Commission to provide, in the best approved soil conserving and erosion preventing manner, proper protective measures which will prevent silting or filling up of such dams, ponds, lakes or reservoirs by the deposition of silt or sand or any other matter.

**Section 489: Public use of waters and structures.**—All structures herein provided for are declared to be public property and public necessities, and the public shall have access to the waters as public waters for all purposes, except individual farm ponds in which the Oklahoma Planning and Resources Board joins for flood control purposes, and any person or corporation shall have the right to appropriate and use said waters when not utilized for public or private use, as if from natural stream or lake, and at such cost as may be agreed upon by such party and the Board; as proper charge for making said water available to such party; Provided, that within sixty (60) days after agreement, or disagreement, on such charge either party may cause such charge to be reviewed and fixed by any Court of competent jurisdiction, in original action for that purpose; Provided, further, that within sixty (60) days after such agreement or disagreement on any such appropriation, use and or charge any aggrieved taxpayer may file protest against such act and require public hearing to be held on such protest by the Board.

**Section 491: Release of easement or easement deed.**—The Oklahoma Planning and Resources Board is hereby authorized to execute and deliver, without actual consideration therefor, a written release of any easement or easement deed heretofore given to the Conservation Commission of the State of Oklahoma for the purpose of constructing a dam, spillway and appurtenances on lands situated in this State, whenever it shall appear to said Board that the need for such ease-

ment or easement deed no longer exists, provided, the owner of the lands affected shall file a written application for such release with the Division of Water Resources.

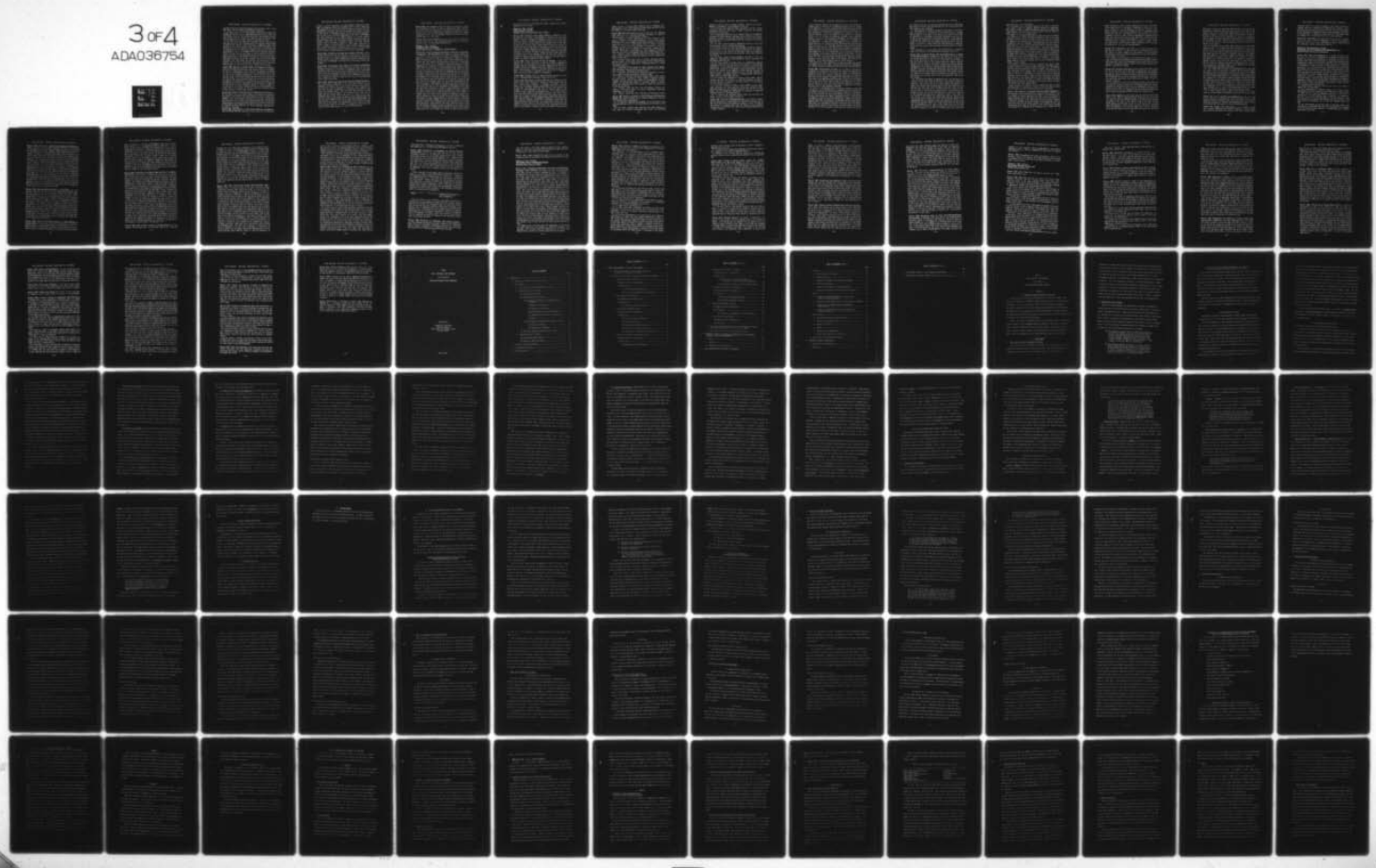
**Section 501: State Board authorized to organize conservancy districts–Members of board as directors of districts.**–In addition to the powers conferred upon the Conservation Commission of the State of Oklahoma by Article 5, Chapter 70, Oklahoma Statutes of 1931, as amended by House Bill Number 84, of the Fifteenth Legislature, the said Conservation Commission of the State of Oklahoma is hereby authorized and empowered to determine and map proposed water conservancy and/or water improvement districts and/or soil erosion prevention districts and to perfect the organization of such proposed districts in the manner as hereinafter prescribed. For the purposes of this Act and other Laws in connection therewith, the members of the Conservation Commission of the State of Oklahoma may be, by the Courts upon which jurisdiction is hereinafter conferred, appointed directors of the Conservancy Districts hereafter created under the authority of this Act.

**Section 502: Petition for organization of district–Notice–Filing petition in district court or in Supreme Court and reference to proper district court.**–When, in the opinion of the Conservation Commission of the State of Oklahoma, the organization of irrigation, flood control, reforestation and/or soil erosion prevention districts is necessary and expedient to effect the purposes and intentions of House Bill No. 84, of the Fifteenth Legislature and all laws to which said Act is cumulative, said Commission may perfect the organization of said District or Districts by filing with the Court hereinafter prescribed a petition alleging the necessity of said District, describing with common certainty the area proposed to be included therein and praying for an order of the Court directing the formation and organization thereof. Upon the filing of such petition, without affidavit or further pleading, the clerk of such Court shall give notice to all persons interested in or affected by the formation of any such District by publication once a week for two successive weeks in a newspaper, published in the county seat of each county in which any part of the proposed District is located. Said notice shall run in the name of the State of Oklahoma, shall be captioned "In the matter of the formation of the . . . . .Conservancy District" and shall be addressed "To all persons interested" in the information thereof, said notice shall recite the filing of such petition and describe with common certainty the area proposed to be included in such District and shall notify all persons interested or affected by the organization of such District to appear in not less than fifteen (15) days after

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the date of the first publication of said notice and show cause, if any they have, why such District should not be organized.

a. In cases where all of said proposed District lies within one county, the petition for the organization thereof shall be filed with the District Court of such county and where the proposed District lies in more than one county, but within one judicial district, such petition may be filed in either county of such judicial district.

b. In cases where the proposed Conservancy District lies in more than one judicial district, the petition for the formation thereof shall be filed in the Supreme Court of the State of Oklahoma. When such petition is filed in the Supreme Court of the State of Oklahoma, the clerk shall docket the same as an original action in such Court and the Supreme Court or any member thereof, shall forthwith determine which District Court of this State is more conveniently near the center or middle of said proposed District and can hear and determine said petition to the greatest convenience of the people within said District, having in view the customary route of travel; and shall thereupon refer and assign said petition and proceeding to such District Court and direct the hearing, determination and control and administration of such proceeding as an original action therein.

**Section 503: Hearing on petition–Order for formation of district.–** Upon the hearing had upon any such petition filed as hereinabove set out, if it shall appear to the Court that the purposes of Chapter 70, Article 5, Oklahoma Statutes of 1931, as amended by House Bill No. 84, of the Fifteenth Legislature, will be best served by the creation of the Conservancy District and the owners of a majority of the area of land in the proposed District have not filed written protest against the formation of such District, the Court shall, by its findings duly entered of record, adjudicate all questions of jurisdiction and declare the Districts organized, giving it a name or number in its descretion, by which it shall be known in all proceedings; provided, that no assessment for benefits shall be levied by a Conservancy District created under this Act.

**Section 504: Decree to describe district–State Board as directors.–** In such decree the Court shall designate the general description of the outline of said District and shall appoint as directors thereof the members of the Conservation Commission of the State of Oklahoma and their successors in office, who shall thereupon have and exercise with reference to such Conservancy Districts all powers and duties conferred upon said Commission by Chapter 70, Article 5, O.S. of 1931, as amended by House Bill No. 84, of the Fifteenth Legislature of the State of Oklahoma.

**Section 505: State Board to control district–Redress accorded persons injuriously affected.–** Upon the creation of any such Conservancy

District, as herein provided, the Conservation Commission of the State of Oklahoma, shall have authority and is hereby empowered and authorized to take such action as is deemed necessary by said Commission to properly carry out the intention and purpose of Chapter 70, Article 5, Oklahoma Statutes of 1931, as amended by House Bill No. 84, of the Fifteenth Legislature of the State of Oklahoma, and said Commission or any member thereof, its servants, agents and employees shall have the right of ingress and egress upon all property comprising said Conservancy District; provided, that any person, firm or corporation, private or public, who shall consider itself or himself injuriously affected in any manner whatsoever by any act performed by any official or agent of said Commission may seek redress according to sub-section (L), Section 6, House Bill No. 84, of the Fifteenth Legislature of the State of Oklahoma.

**Section 506: Jurisdiction of courts over creation of districts.**—Jurisdiction of all actions for the creation of Conservancy Districts as outlined in this Act is hereby specifically conferred upon the various District Courts of the State of Oklahoma and upon the Supreme Court of the State of Oklahoma to be exercised in the manner herein prescribed.

**Section 507: Proceedings to be without costs except for publishing notices.**—Any petition filed under authority of this Act by the Conservation Commission of the State of Oklahoma shall be accepted and filed by the Clerk of the Court in which the same is filed without costs, and all proceedings thereunder shall be had without cost to the Conservation Commission of the State of Oklahoma, except that such Commission shall be liable for all costs of publishing the notices herein prescribed.

**Section 508: Appeal from organization of district—Collateral attack.**—The Conservation Commission or any land owner affected by any proposed Conservancy District or by the creation of any Conservancy Districts under the provisions of this Act, who is aggrieved by any order refusing to establish or establishing such District may, within one hundred eighty (180) days after the rendition of such order, appeal from the same to the Supreme Court of the State of Oklahoma upon giving bond in the sum to be fixed by the Court. Provided, however, that where any order is made organizing any such District, such judgment shall not be superseded pending appeal unless fifty-one (51%) per cent of the land owners affected by such order join in the appeal. The organization of any Conservancy District hereunder shall not be subject to collateral attack in any suit, action or proceeding except as to jurisdictional questions.

**Section 509: Act cumulative.**—This Act shall be cumulative to Chapter 70, Oklahoma Statutes of 1931, as amended by House Bill No. 84, of the Fifteenth Legislature of the State of Oklahoma, and the powers, duties and limitations hereby imposed upon the Conservation Commission of the State of Oklahoma shall be in addition to those already imposed by said laws.

**Section 510: Partial invalidity.**—If any part of this Act shall be declared invalid by any Court of competent jurisdiction, such decision shall not affect the remaining portions hereof.

**Chapter 4, 1961, Title 82.**
**CONSERVATION IN GENERAL**
**County Commissioners, Cooperation with State Board**

**Section 521: County commissioners—Duties concerning conservation —Cooperation with State Board.**—The Board of County Commissioners of the various counties of the State of Oklahoma are hereby authorized to cooperate with the Conservation Commission of the State of Oklahoma in all instances where such cooperation is necessary and will expedite the provisions of this Act or any other Act to which this Act is cumulative, and such boards are further empowered and authorized to devise methods and means to stop and/or prevent soil erosion or soil drifting in their respective counties. In any county or any part thereof of the State where the Conservation Commission of the State of Oklahoma has not exercised its powers for the prevention and control of soil erosion, the Board of County Commissioners may order the land subject to soil erosion and drifting to be cultivated, plowed, listed or planted, or may in any other manner take such steps as are necessary to prevent such soil erosion and drifting. Upon any such order being made by the Board of County Commissioners, all owners of land within the district designated by the Board of County Commissioners shall forthwith take such steps as are designated by said Board and in case any land owner shall fail or refuse to comply therewith, the Board of County Commissioners is hereby authorized to employ agents to go upon the land of any such person who shall fail or refuse to comply with such orders, for the purpose of plowing, ditching, listing or planting the same to prevent soil erosion and drifting, and said Board of County Commissioners is hereby expressly authorized to assess reasonable charges for such services against such lands affected thereby, which charges and assessments shall be levied and collected as other taxes on real estate; provided, that no order for the plowing, ditching, listing or planting of any lands in any given area shall be ordered by any Board of County Commissioners unless and until sixty (60%) per cent of the land owners of such

area have filed with such Board of County Commissioners written requests for such action.

**Chapter 9, 1961, Title 82.**
**POLLUTION OF WATER**
**Oklahoma Water Pollution Control Act of 1955**

**Section 901: Municipal water supply–Pollution unlawful.**–It shall be unlawful for any firm, co-partnership or corporation or any of the partners, officers, managers or employees thereof, or for any other person to pollute, or permit the pollution, by salt water or by crude oil or the bottom settlings thereof, or by sulphur water or any other mineral water or by the refuse or the products of any well or mine, of any stream, pond, spring, lake or other water reservoir fit to be used, and used as a water supply by an incorporated city or town by which said water is rendered unfit for use as a water supply for municipal purposes. In any case in which a municipal water supply has been so polluted prior to the passage of this Act and such pollution is suffered to continue after the passage of this Act the same shall be deemed as unlawful pollution as herein defined.

**Section 902: Cities and towns–Action for damages.**– Any incorporated city or town shall have a right of action for damages resulting from such pollution of its water supply and the measure of damages shall be the amount which will compensate for the detriment caused thereby, whether it could have been anticipated or not. Where such pollution is continued for a period of six months or more, the injury shall be regarded as permanent.

**Section 903: Citation.**–This Act shall be known and may be cited as the "Oklahoma Water Pollution Control Act of 1955."

**Section 904: Declaration of policy.**–Whereas the pollution of the waters of this State constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas the problem of water pollution of this State is closely related to the problem of water pollution in adjoining states, it is hereby declared to be the public policy of this State to conserve the waters of the State and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to provide that no waste be discharged into any waters of the State without first being given the degree of treatment necessary to protect the legitimate beneficial uses of such waters; to provide for the prevention, abatement and

control of new or existing water pollution; and to cooperate with other agencies of this State, agencies of other States and the Federal Government in carrying out these objectives.

**Section 905: Definitions.**—Wherever used in this Act, the following terms shall have the respective meanings hereinafter set forth or indicated unless the contex otherwise requires:

(a) "Pollution" means contamination, or other alteration of the physical, chemical or biological properties of any natural waters of the State, or such discharge of any liquid, gaseous or solid substance into anv waters of the State as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

(b) "Wastes" means industrial waste and all other liquid, gaseous or solid substances which may pollute or tend to pollute any waters of the State.

(c) "System" means pipe lines or conduits, pumping stations, and force mains, and all other constructions, devices, appurtenances and facilities used for collecting or conducting wastes to a point of ultimate disposal.

(d) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes.

(e) "Disposal system" means a system for disposing of wastes, and includes sewerage systems and treatment works.

(f) "Waters of the State" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this State or any portion thereof.

(g) "Person" means the State, any municipality, political subdivision, institutions, public or private corporation, individual, partnership, or other entity.

(h) "Board" means the State Planning and Resources Board.

**Section 906: Powers and duties of State Planning and Resources Board.**—The Board shall have and is hereby authorized to exercise the following powers and duties:

(a) To develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the waters of this State;

(b) To advise, consult, and cooperate with other agencies of this State, the Federal Government, other states and interstate

agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this Act;

(c) To accept and administer loans and grants from the Federal Government and from other sources, public or private, for carrying out any of its functions;

(d) To encourage, participate in, or conduct studies, investigations, research and demonstrations relating to water pollution and causes, prevention, control, and abatement thereof as it may deem advisable and necessary in the public interest for the discharge of its duties under this Act;

(e) To collect and disseminate information relating to water and the prevention, control and abatement thereof;

(f) To adopt, modify or repeal and promulgate standards of quality of the waters of the State and classify such waters according to their best uses in the interest of the public under such conditions as the Board may prescribe for the prevention, control and abatement of pollution;

(g) To adopt, modify, repeal, promulgate and enforce rules and regulations implementing or effectuating the powers and duties of the Board under this Act;

(h) To issue, modify, or revoke orders (1) prohibiting or abating discharges of wastes into the waters of the State; (2) requiring the construction of new disposal systems or any parts thereof or the modification, extension or alteration of existing disposal systems or any part thereof, or the adoption of other remedial measures to prevent, control, or abate pollution; and (3) setting standards of water quality, classifying waters or evidencing any other determination by the Board under this Act;

(i) To require the submission of and to review plans, specifications and other data relative to industrial disposal systems or any part thereof in connection with the issuance of such permits as are required by this Act;

(j) To issue, continue in effect, revoke, modify or deny, under such conditions as it may prescribe, to prevent, control or abate pollution, permits for the discharge of wastes into the waters of the State, and for installation, modification or operation of industrial disposal systems or any parts thereof;

(k) To exercise all incidental powers which are necessary and proper to carry out the purposes of this Act.

**Section 907: Activities prohibited–Permits.**–(a)It shall be unlawful for any person to cause pollution as defined in Section 2(a) of this Act of any waters of the State or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the State. Any such action is hereby declared to be a public nuisance.

(b) It shall be unlawful for any person to carry on any of the following activities without first securing such permit from the Board, as is required by it, for the disposal of all industrial wastes which are or may be discharged thereby into the waters of the State: (1) the construction, installation, modification or operation of any industrial disposal system or part thereof or any extension or addition thereto; (2) the increase in volume or strength of any industrial wastes in excess of the permissive discharges specified under any existing permit; (3) the construction, installation, or operation of any industrial or commercial establishment or any extension or modification thereof or addition thereto, the operation of which would cause an increase in the discharge of wastes into the waters of the State or would otherwise alter the physical, chemical or biological properties of any waters of the State in any manner not already lawfully authorized; (4) the construction or use of any new outlet for the discharge of any wastes into the waters of the State; (5) The State Department of Health shall have the responsibility for issuing permit for the construction and installation of municipal sewage disposal systems and shall report to the Board such technical information as the Board requires relative to such systems.

The Board under such conditions as it may prescribe, may require the submission of such plans, specifications and other information as it deems revelant in connection with the issuance of such permits.

**Section 908: Classification of waters.**—(a) In order to effectuate a comprehensive program for the prevention, control and abatement of pollution of the waters of this State, the Board is authorized to group such waters into classes according to their present and future best uses for the purpose of progressively improving the quality of such waters and upgrading them from time to time by reclassifying them, to the extent that is practical and in the public interest. Standard of quality for each such classification consistent with best present and future use of such waters may be adopted by the Board and from time to time modified or changed.

(b) Prior to classifying waters or setting standard or modifying or repealing such classifications or standards the Board shall conduct public hearings for the consideration, adoption or amendment of the classification of waters and standard of purity and quality thereof shall specify the waters concerning which a classification is sought to be made or for which standards are sought to be adopted and the time, date, and place of such hearing, provided said hearing shall be held in the area affected; such notice shall be published at least twice in a newspaper of general circulation in the area affected and shall be mailed at least twenty (20) days before such public hearing to the chief executive of each political subdivision of the

area affected and may be mailed to such other persons as the Board has reason to believe may be affected by such classification and the setting of such standards.

(c) The adoption of standards of quality of the waters of the State and classification of such waters or any modification or change thereof shall be effectuated by an order of the Board which shall be published in a newspaper of general circulation in the area affected. In classifying waters and setting standards of water quality or making any modification or change thereof, the Board shall announce a reasonable time for persons discharging waste into the waters of the State to comply with such classifications or standards, unless such discharges create an actual or potential hazard to public health.

Any discharge in accord with such classification or standards shall not be deemed to be pollution for the purpose of this Act.

**Section 909: Violations–Notice and hearing–Revocation or denial of Permits–Emergencies.**–(a) Whenever the Board determines there are reasonable grounds to believe that there has been a violation of any of the provisions of this Act or of any order of the Board, it may give written notice to the alleged violator or violators specifying the cause of complaint. Such notice shall require that the matters complained of be corrected or that the alleged violator appear before the Board at a time and place specified in the notice and answer the charges complained of, provided said hearings shall be held in the area affected; the notice shall be delivered to the alleged violator or violators in accordance with the provisions of Subsection (e) of this Section not less than fifteen (15) days before the time set for the hearing.

(b) The Board shall afford an opportunity for a fair hearing in accordance with the provisions of Section 8 to the alleged violator or violators at the county seat of the county wherein the alleged violation has occurred. On the basis of the evidence produced at the hearing the Board shall make findings of fact and conclusions of law and enter such order as in its opinion will best further the purpose of this Act and shall give written notice of such order to the alleged violator and to such other persons as shall have appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the Board itself, such person shall transmit the record of the hearing together with recommendations for findings of fact and conclusion of law to the Board which shall thereupon enter its order on the basis of such record and recommendations. The order of the Board shall become final and binding on all parties unless appealed to the district court as provided in Section 11 of this Act within fifteen (15) days after

notice has been sent to the parties.

(c) Any person who is denied a permit by the Board or who has such permit revoked or modified shall be afforded an opportunity for a public hearing in connection therewith upon written application within fifteen (15) days after receipt of notice from the Board of such denial, revocation or modification.

(d) Whenever the Board finds that an emergency exists requiring immediate action to protect the public health or welfare it may without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Notwithstanding the provisions of Subsection (b) of this Section such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately but on application to the Board shall be afforded a hearing within ten (10) days. On the basis of such hearing the Board shall continue such order in effect, revoke it or modify it; provided, that any person aggrieved by such order continued after the hearing provided in this Subsection, may appeal to the District Court of the area affected within fifteen (15) days, such appeal when docketed shall have priority over all cases pending on said docket, except criminal.

(e) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the Board may be served on any person affected thereby personally or by the publication, and proof of such service may be made in like manner as in case of service of a summons in a civil action, such proof to be filed in the office of the Board; or such services may be made by mailing a copy of the notice, order, or other instrument by registered mail, directed to the person affected at his last known post office address as shown by the files or records of the Board, and proof thereof may be made by the affidavit of the person who did the mailing, filed in the office of the Board.

Every certificate or affidavit of service made and filed as herein provided shall be prima facie evidence of the facts therein stated, and a certified copy thereof shall have like force and effect.

**Section 910: Conduct of hearings–Witnesses–Oaths–Subpoenas.–** The hearings herein provided may be conducted by the Board itself at a regular or special meeting of the Board, or the Board may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the Board at any time and place. A record or summary of the proceedings of such hearings shall be taken and filed with the Board, together with findings of facts and conclusions of law made by the Board. In any such hearing a member of the Board or a hearing officer designated by it shall have the

power to administer oaths, examine witnesses and issue in the name of the Board notice of hearings or subpoenas requiring the testimony of witnesses and the production of evidence revelant to any matter involved in such hearing. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions. In case of contumacy or refusal to obey a notice of hearing and subpoena issued under this Section, the district court shall have jurisdiction upon application of the Board of Representative, to issue an order requiring such person to appear and testify or produce evidence as the case may require and any failure to obey such order of the court may be punished by such court as contempt thereof.

**Section 911: Inspections.**–The Board or its duly authorized representative shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to pollution or the possible pollution of any waters of the State.

Any authorized representative of the Board may examine any records or memoranda pertaining to the operation of disposal systems. The Board may require the maintenance of records relating to the operation of disposal systems. Copies of such records must be submitted to the Board on request.

**Section 912: Penalty–Injunctions.**–(a) Any person who shall violate any of the provisions of, or who fails to perform any duty imposed by, this Act or who violates any order or determination of the Board promulgated pursuant to this Act shall be guilty of a misdemeanor and in addition thereto may be enjoined from continuing such violation. Each day upon which such violation occurs shall constitute a separate violation.

(b) It shall be the duty of the Attorney General on the request of the Board to bring an action for an injunction against any person violating the provisions of this Act, or violating any order or determination of the Board. In any action for an injunction brought pursuant to this Section, any findings of the Board after hearing or due notice shall be prima facie evidence of the facts found therein.

**Section 913: Appeals.**–(a) An appeal may be taken from any final order or other final determination of the Board, by any person who is or may be adversely affected thereby, or by the Attorney General on behalf of the State to any district court of the area affected. Within thirty (30) days after receipt of a copy of the order, or other final determination, or after service of notice thereof by registered mail, the appellant or his attorney shall serve a notice of appeal on the Board through its director provided that during such thirty-day

period the court may for good cause shown extend such time for not exceeding an additional sixty (60) days. The notice of appeal shall refer to the action of the Board appealed from, shall specify the grounds of appeal, including both points of law and facts which are asserted or questioned by the appellant. A copy of the original notice of appeal with proof of service shall be filed by the appellant or his attorney with the clerk of the court within ten (10) days of the service of the notice and thereupon the court shall have jurisdiction of the appeal.

(b) The appellant and the Board shall in all cases be deemed the original parties to an appeal. The State through the Attorney General or any other person affected may become a party by intervention as in a civil action upon showing cause therefor. The Attorney General shall represent the Board, if requested, upon all such appeals unless he appeals or intervenes in behalf of the State. If the Attorney General or a member of his staff is not available to represent the Board in any particular proceeding, the Board is empowered to appoint special counsel for such proceeding. No bond or deposit for costs shall be required of the State or Board upon any such appeal or upon any subsequent appeal to the Supreme Court or other court proceedings pertaining to the matter.

(c) The appeal shall be heard and determined by the court upon the issues raised by the notice of appeal and the answer thereto according to the rules related to a trial in the nature of an appeal in an administrative determination. All findings of facts by the Board are to be deemed final, unless it is shown that such findings were not supported by substantial evidence produced before the Board at the hearing. In any appeal or other proceeding involving any order, or other determination of the Board, the action of the Board shall be prima facie reasonable and valid and it shall be presumed that all requirements of the law pertaining to the taking thereof have been complied with. A copy of the proceedings before the Board shall be certified to the court in connection with each appeal.

(d) A further appeal may be taken to the Supreme Court of the State in the same manner as appeals in other civil actions are taken.

**Section 914: Act as auxiliary and supplementary.**—This Act shall not be construed as repealing any laws of the State relating to the pollution of waters thereof or any conservation laws, but shall be held and construed as auxiliary and supplementary thereto, except to the extent that the same are in direct conflict herewith.

**Section 915: Purpose and construction.**—It is the purpose of this Act to provide additional and cumulative remedies to prevent, abate and control the pollution of the waters of the State. Nothing herein

contained shall be construed to abridge or alter rights of action or remedies under the common law or statutory law, criminal or civil; nor shall any provision of this Act, or any act done by virtue thereof, be construed as estopping the State, or any municipality or person, as riparian owners or otherwise, in the exercise of their rights under the common law to suppress nuisances or to abate pollution.

**Section 916: Severability.**—The provisions of this Act are severable, and if any clause, sentence, paragraph or section hereof shall be held void, the decision of the court shall not affect or impair any of the remaining portions or provisions of the Act.

**Chapter 19, 1963 Supplement, Title 82.**
**OKLAHOMA WATER CONSERVATION COMMISSION (new)**
**Oklahoma Water Conservation Commission**

**Section 1351: State policy—Purpose.**—It is hereby declared to be the policy of the State of Oklahoma to encourage and promote the optimum development and utilization of all feasible reservoir sites or areas within this State which may be suitable and useable for the conservation storage of the waters of this State by the construction or enlargement of dams, reservoirs or other structures. It is the purpose of this Act to provide or assist in providing for the acquisition, development and utilization of storage and control facilities of the waters of this State for the use and benefit of the public and for the conservation and distribution of water for useful purposes in or from reservoirs or other storage facilities constructed, or hereafter constructed, modified or enlarged, within the State of Oklahoma by the United States of America or the State of Oklahoma or any agency, department, subdivision or instrumentality thereof, for the following and specific reasons and benefits for the general welfare and the future economic growth of the State:

A. Multiple-purpose dam and reservoir sites are very limited in number and not replaceable.

B. Water management in Oklahoma requires the storage of water during periods of surplus supply for use during periods of short supply.

C. Most reservoir sites in Oklahoma will have a useful life of seventy-five to several hundred years. Therefore, it is imperative that the reservoir sites be developed to the full potential of the site and the net water yield of the drainage area after all present and future needs and beneficial use of water are satisfied above said site.

D. The conservation of soil and water in Oklahoma requires the continuation of watershed protection and flood prevention programs on an accelerated priority basis with consideration given to future water needs of the area.

**Section 1352: Commission created–Status–Membership–Expenses.–** There is hereby created a body corporate and politic to be known as the Water Conservation Storage Commission which may sue and be sued and plead and be impleaded. The Commission, where necessary to promote the optimum development and utilization of reservoir sites, shall have the power to acquire by purchase, gift, devise or eminent domain land and interests in land except mineral interests. The Commission is hereby constituted an instrumentality of the State of Oklahoma and exercise by the Commission of the powers conferred by this Act shall be deemed and shall be held to be an essential government function of the State of Oklahoma. The Commission shall be composed of the members of the Oklahoma Water Resources Board and the officers of said Board shall be the officers of the Commission. The duties assigned to each member of the Commission by the provisions of this Act shall be considered additional duties to those required by virtue of their membership on the Oklahoma Water Resources Board and they shall not receive any additional compensation for the performance of the duties required by this Act, except that they shall be entitled to their actual expenses incurred and reimbursement for such expenses shall be paid out of the funds available for the operation of their department, on the same basis as now provided by law.

**Section 1353: Meetings–Quorum–Record of proceedings.–**The Commission shall meet on the call of the Commission Chairman upon five days written notice to each member from the Secretary, except that a meeting may be held without notice whenever those not attending waive in writing or by telegram addressed to the Secretary of the Commission their right to notice of such meeting. All meetings of the Commission shall be open to the communications media and public. Four members of the Commission shall constitute a quorum and the vote of four members shall be necessary for any action taken by the Commission. No vacancy in the membership of the Commission shall impair the rights of a quorum to exercise and perform all of the rights and duties of the Commission. The Secretary of the Commission shall cause to be recorded an accurate written record of the actions and proceedings of the Commission and shall keep such records open for public inspection for as long as the Commission or any obligations thereof exist.

**Section 1354: Review of proposed projects or plans–Storage of surplus waters.** It shall be the duty of the Commission to review any proposed project or plan whereby waters of this State are to be collected, stored or retained for any purpose by any dam, reservoir or other structure constructed or caused to be constructed by the United

States of America or the State of Oklahoma or any agency, department, subdivision or instrumentality thereof. Whenever its determined by the Commission after such examination, review, and recommendation that there are surplus waters in excess of the present and future needs of water users of the contributing watershed available at the proposed dam and reservoir site for the full and optimum development of any dam, reservoir or other storage site or location requires inclusion in such plan or project provisions for development of water supplies for domestic, municipal, agricultural, industrial and other purposes, then the Commission shall notify the responsible agency or department of the Federal government and the agencies of the State of Oklahoma of its conclusions and request that the design and specification of such project be constructed to include storage of such water for such uses.

**Section 1355: Agreements with Federal agencies–Cost of reimbursement.**–Whenever any project or plan for the construction or enlargement of any dam, reservoir or other structure includes within its design and specifications provisions for the development of water supplies for domestic, municipal, agricultural, industrial and other purposes the Commission is hereby directed to negotiate with the municipalities or other local interests of this State and its agencies and the Federal government or its responsible agency, department or instrumentality for the purpose of determining the cost of reimbursing the Federal government for the allocated cost of including such municipal, agricultural and industrial water storage within such construction. Any available storage for such purposes which cannot reasonably be used within the present or estimated future firm demands of local users may be contracted for by the Commission in order to assure the Federal government that such added cost will be provided as authorized by Federal law, and that necessary funds for any charges shall be paid by the Commission to the Federal government pursuant to such contract and applicable Federal law after examination and determination by the Oklahoma Water Resources Board that such charges are in harmony with existing Federal law and policy at the time that the projects are built and the contracts between the Commission and the Federal government are executed. In cases where all necessary costs to provide maximum conservation storage in a site cannot be contracted for between the Federal government and the Commission because of limitations on the participation by the Federal government, the Commission shall have the authority to provide funds covering those costs.

**Section 1356: Sale, transfer or lease of storage facilities.**–For the purpose of providing water for municipal, agricultural, industrial

and other uses the Commission is required to sell, transfer or lease, in whole or in part, any acquired storage facilities including land or interests therein to any municipality, industry or other local interests, upon the request of the contracting party at the conclusion of the pay-out of the storage, except that any such party requesting title shall be responsible for the pro rata part of the maintenance and operation costs of such storage. In no event shall the Commission require any payment for such transfer in excess of the costs to the Commission of the construction and operation of the storage facility and the interest on obligations of the Commission. The Commission shall not permit the sale or resale of any water for use outside the State of Oklahoma. Where lands or interest therein are acquired by the Commission and not utilized for the purposes for which it was acquired, or which have been utilized but such utilization has ceased, then, after ten (10) years from the date of acquisition, or ten (10) years from the date utilization ceased, as the case may be, such land must be sold at public auction to the highest bidder; and mandamus by any interested party will be to require such sale.

**Section 1357: Water Conservation Storage Fund–Investment certificates.**–There is hereby created in the State Treasury a Water Conservation Storage Fund, which fund shall be used by the Commission for those purposes authorized by this Act. To provide necessary funds the Commission is hereby authorized to issue investment certificates from time to time, as may be required, to provide an adequate amount of cash in such fund which may be necessary to meet the anticipated needs of the Commission. The Commission is authorized to provide for the payment of such investment certificates and the rights of the holders thereof, as hereinafter provided. Said investment certificates may be issued in one or more series, may be sold in such manner and at par, may bear such date or dates, may mature at such time or times, not to exceed fifty years from their date, may be in such denomination or denominations, may be in such form either coupon or registered, may carry such registration or conversion privileges, may be executed in such manner, may be payable in such medium of payments, at such place or places, may be subject to such term of redemption, with or without premium, and may bear such rate or rates of interest, as may be provided by resolution or resolutions to be adopted by the Commission. Such investment certificates shall have all of the qualities and incidents of negotiable paper, and shall not be subject to taxation by the State of Oklahoma, or by any county, municipality or political subdivision therein. All investment certificates maturing after ten (10) years from their dates shall be subject to call and redemption, in

inverse order of maturity and investment certificate numbers, at par and accrued interest, the detailed provisions for such call and redemption to be fixed by the Commission in the resolution or resolutions authorizing the issuance of said investment certificates.

The investment certificates issued hereunder shall not be an indebtedness of the State of Oklahoma or of the Commission herein, but shall be special obligations payable solely from the revenues to be derived from the sale of storage, and the Commission is authorized and directed to pledge all or any part of such revenues to the payment of principal and interest on the investment certificates and to create a reserve for such purposes.

**Section 1358: Purchase of certificates by State Treasurer.**—(a) The State Treasurer of the State of Oklahoma, by and with the approval and direction of the State Depository Board, is hereby authorized and required to purchase from the Commission at private sale not to exceed at any one time One Million Five Hundred Thousand Dollars ($1,500,000.00) in said investment certificates, or interim investment certificates, as an investment of the public monies in his possession. It shall be the responsibility of the State Depository Board, in approving such investment, to limit its approval to the investment of only that portion of such public monies as it deems to be more than sufficient to meet current expenditures payable from public monies. The State Treasurer is authorized and required to buy, and the Commission is authorized and required to sell to the State Treasurer at private sale, as provided in this Section, so many of the investment certificates authorized by this Act as the State Depository Board will certify in writing to the Commission may be safely purchased for investment of public monies by the State Treasurer without handicapping the State of Oklahoma in promptly meeting its obligations. In event of such sale or sales, the Commission shall determine and fix the rate of interest and investment certificates so sold shall bear such rate of interest.

(b) In the event any or all of the investment certificates are sold to the State Treasurer under the provisions of subsection (a) hereof and thereafter the uninvested cash on hand and in solvent banks should fall short of demand orders on the State Treasury, it shall be the duty of the State Treasurer to so report to the State Budget Director for confirmation and to the State Depository Board for authority to sell such part or all of the investment certificates as are necessary to be converted into cash to meet such demands. If confirmed and authorized as aforesaid, the State Treasurer may sell such part of all of the said investment certificates as he is so authorized to sell, at private sale, to the State Insurance Fund, the Teachers Retirement Fund, or any other State fund, department or agency which has available monies to purchase the same, and all

such State funds, departments and agencies are hereby authorized and empowered to so purchase such investment certificates.

**Section 1359: Examination of proceedings by Attorney General–Incontestability.**–Within ten days after the sale or sales of said investment certificates, the Attorney General of the State of Oklahoma shall examine all of the proceedings of the Commission and all resolutions passed and actions taken by it in connection with the authorization, issuance and sale of such investment certificates and shall, if he finds such investment certificate proceedings and sale to be constitutional and lawful, execute his certificate and file the same of record in the office of the Secretary of State of the State of Oklahoma, which said certificate shall read substantially as follows:

I have examined all proceedings had in connection with the issuance of the Water Conservation Storage Investment Certificates in the aggregate principal amount of $____, dated____ authorized and sold pursuant to____, and find said proceedings and sale to be constitutional, lawful and regular in all particulars and that said investment certificates will be valid obligations of the Water Conservation Storage Commission. Unless suit thereon shall be brought in the Supreme Court of the State of Oklahoma within thirty days from the date of this certificate, said investment certificates shall be incontestable for all purposes.

_____ _____

Date Attorney General of the State of Oklahoma

Upon the filing of such certificate, investment certificates issued pursuant to proceedings so examined by the Attorney General shall be incontestable for all purposes upon the expiration of thirty days from the date of such certificate, unless suit be brought in the Supreme Court of Oklahoma prior to the expiration of said period as provided herein. A facsimile of such Attorney General's certificate shall appear on each investment certificate so issued. The Supreme Court of Oklahoma is hereby vested with exclusive jurisdiction over any litigation involving the validity of any investment certificates issued under this Act.

**Section 1360: Execution of certificates and contracts–Audits.**–(a) The Chairman and Secretary, acting in behalf of the Commission shall execute all investment certificates issued by the Commission and all contracts awarded by the Commission after approval of the form thereof by the Commission and the Attorney General.

(b) All invoices, bills and claims of whatever nature shall be subject to audit under provisions of the preaudit law and other laws relating to the disbursement of public funds.

**Section 1361: Legal services.**—All legal services required by the Commission shall be performed by the Attorney General and his staff.

**Chapter 14, 1961, Title 82.**
**OKLAHOMA WATER RESOURCES BOARD**
**Oklahoma Water Resources Board**

**Section 1071: Membership—Appointment and tenure—Compensation—Vacancies —Oath —Officers.**—(a) There is hereby created the Oklahoma Water Resources Board consisting of seven (7) members to be appointed by the Governor, by and with the advice and consent of the Senate. One member shall be appointed for a term of one (1) year; one member shall be appointed for a term of two (2) years; one member shall be appointed for a term of three (3) years; one member shall be appointed for a term of four (4) years; one member shall be appointed for a term of five (5) years; one member shall be appointed for a term of six (6) years; and one member shall be appointed for a term of seven (7) years. Upon the expiration of said terms, their successors shall be appointed for terms of seven (7) years. One member shall be appointed from each of the present Congressional districts of this State, and one member shall be appointed at large. Each member shall be qualified elector of this State. At all times the membership of said Board shall have represented on it at least one member well versed in each of the following major types of water use: recreational, industrial, municipal, agricultural and soil conservation work. Not more than two (2) members may be selected representing any one of the major types of water use. Each member of the Board shall receive Fifteen Dollars ($15.00) per day for each day spent in attendance of said Board, and travel expense as provided by law for State officers and employees generally; the Board shall meet at least once each month. The members of the Board may be removed only for cause. Whenever a vacancy shall occur, the Governor shall appoint a qualified person to fill the unexpired term of the vacant office. Each member of said Board upon entering upon his duties shall take and subscribe to the Constitutional and statutory oath of office and file the same with the Secretary of State.

(b) Within thirty (30) days after the appointment of the Board, the Board shall meet and organize by electing a chairman, vice chairman, and secretary from the membership of the Board, who shall perform such duties as shall be prescribed by the Board.

**Section 1072: Authority of board.**—In addition to any and all other authority conferred upon it by law, the Oklahoma Water Resources Board shall also have authority:

(a) Generally to do all such things as in its judgment may be necessary, proper or expedient in the accomplishment of its duties.

(b) To make such contracts and execute such instruments as in the judgment of the Board are necessary or convenient to the exercise of any of the powers conferred upon it by law. Providing, however, no contract shall be made conveying the title or use of any waters of the State of Oklahoma to any person, firm, corporation or other state or subdivision of Government, for sale or use in any other state, unless such contract be specifically authorized by an act of the Oklahoma Legislature and thereafter as approved by it.

(c) To negotiate contracts and other agreements with the Federal government to arrange for the development of water resources, and for the storage and distribution of water for beneficial purposes, provided, however, that the Board shall act in such capacity only as an intermediary in assisting others, and under no circumstances shall said Board have any power or authority to build, construct, or finance any waterways, dams, or other such projects for itself, except as may be otherwise specifically provided by the laws of this State.

(d) To develop Statewide and local plans to assure the best and most effective use and control of water to meet both the current and long range needs of the people of Oklahoma; and to cooperate in such planning with any public or private agency, entity, or person interested in water, and are directed to prepare such plans for consideration and approval by the legislature.

(e) To employ and fix the compensation of such officers, agents, technical personnel and employees of the Board as it shall deem necessary to the proper performance of its duties.

(f) To adopt and use an official seal.

(g) To make such rules, regulations and orders as it may deem necessary or convenient to the exercise of any of the powers or the performance of any of the duties conferred or imposed upon it by this or any other law.

(h) To institute and maintain, or to intervene in, any actions or proceedings in or before any court, board, commission or officer of this or any other state or of the United States to stop or prevent any use, misuse, appropriation, taking or pollution of any of the waters of this State which is in whole or in part in violation of any law, or of any rules, regulations, orders, judgments or decrees, of any court, board, commission or officer of this or any other state or of the United States; and to institute and maintain, or intervene in any other action or proceeding where the Board deems it necessary to the proper

execution and discharge of any of the powers or duties conferred or imposed upon it by law.

(i) To prescribe the amount and conditions of bonds of its officers and employees, and to pay the premiums thereon.

(j) Nothing in this section shall be construed as limiting any general or specific power conferred on the Board by this or any other law.

**Section 1073: Transfer of powers, duties, records, etc., of Oklahoma Planning and Resources Board.**—(a) There are hereby conferred upon and transferred to the Oklahoma Water Resources Board:

(1) Any and all powers, duties and authority conferred upon or imposed upon the Oklahoma Planning and Resources Board by any part or section of Title 82, Oklahoma Statutes 1951; or by any part or section of Title 82, Oklahoma Statutes Supplement 1955; or by 74 O.S. 1951 Section 351c; or by any law amendatory thereof or supplementary thereto; and

(2) Any and all powers, duties and authority pertaining to water; waterpower; water control; drainage; water storage; irrigation; pollution of waters; water conservation; water use; appropriation of waters; water rights; water priorities; water, irrigation, conservancy, drainage or any similar districts; or the granting of any permits or licenses, or the making of any decisions or orders, to or for or concerning any of the foregoing; which are conferred or imposed by any existing law upon the Oklahoma Planning and Resources Board.

(b) All records and matters pending before the Oklahoma Planning and Resources Board relating to the foregoing are hereby transferred to said Oklahoma Water Resources Board including unexpended funds, office equipment, motor vehicles, printing and map reproduction machines and all other property purchased with funds heretofore appropriated by the Legislature to the Division of Water Resources, Oklahoma Planning and Resources Board.

(c) Provided, however, that nothing in this section or in this Act shall be construed as depriving the Oklahoma Planning and Resources Board of any authority, jurisdiction or control it may have under the laws of this State over State parks or waters therein or appurtenant thereto which are owned, leased or operated by the State.

**Section 1074: Hearings.**—Wherever the Board is authorized or required by any statute to hold a hearing upon or concerning any matter, such hearing may be conducted by the Board itself at a regular or special meeting of the Board, or the Board may designate a hearing officer or officers who shall have the power and authority to conduct such hearings in the name of the Board at any time and place subject to any applicable rules, regulations, or orders of the

Board. A record or summary of the proceedings of such hearings shall be taken and filed with the Board, together with findings of fact and orders of determination made by the Board. In any such hearing a member of the Board or a hearing officer designated by it shall have the power to administer oaths, examine witnesses and issue in the name of the Board notice of hearings or subpoenas requiring the testimony of witnesses and the production of evidence revelant to any matter involved in such hearing. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions in district courts. In case of contumacy or refusal to obey a subpoena issued under this section, the district court shall have jurisdiction, upon application of the Board or hearing officer, to issue an order requiring such person to appear and testify or produce evidence as the case may require and any failure to obey such order of the court may be punished by such court as contempt thereof. A member or members of the Board, the Executive Director, or any officer or employee of the Board may be designated as a hearing officer.

**Section 1075: Compilation and indexing of data.**—The Board shall compile and index all available data concerning the water resources of this State into a form that will be accessible for use by any citizen of this State. Such information shall include rainfall reports and other precipitation data; records of public and private water storage facilities; data on quantity and rate of stream flow; locations of natural and artificial springs; data on water insoak and runoff; extent and depth of underground water reservoirs, reports from well-drilling logs; reports on quality of water found in various parts of Oklahoma; and an up-to-date codification of all Oklahoma laws pertaining to the conservation, storage, use and distribution of water resources.

**Section 1076: Executive director—Qualifications—Powers and duties.** —The Board shall appoint an Executive Director, who shall have had at least six (6) years' practical and administrative experience in water resource management or a college education, and fix his duties and compensation. The Board is specifically authorized to delegate to such Executive Director such of its powers and duties as it may deem proper, including powers and duties involving the exercise of official discretion. The authority hereby granted to the Board to delegate powers and duties to the Executive Director shall extend to any powers and duties given or transferred to the Board under this Act, or under any other law conferring powers or imposing duties upon the Board, and shall also extend to any powers conferred or duties imposed upon the Board by any future law, unless

such future laws shall expressly negate the authority to make such delegation. Any other part of this Act, or any other law, granting authority to the Board to delegate any powers or duties, shall not be deemed to be a limitation upon the authority conferred by this section. The Executive Director shall exercise any such delegated powers, and perform such delegated duties, in accordance with any rules, regulations, or orders made by the Board which are applicable thereto. Provided, however, the Board shall not delegate to such Director any power of determining policy, the execution of any contract, or the final adjudication of any claims, applications or controversies, all of which powers and duties shall be exercised solely by the Board.

**Section 1077: Provisions cumulative–Review of board orders.–** (a) The provisions of this section are expressly declared to be cumulative to any other method provided by law for the review of orders or decisions of the Oklahoma Water Resources Board.
(b) Any person adversely affected by any final order of determination of the Oklahoma Water Resources Board may, within thirty (30) days after the date thereof, commence an action in the Supreme Court of the State to review such award or decision. Said Supreme Court shall have original jurisdiction of such action, and is authorized to prescribe rules for the commencement and trial of the same. Such action shall be commenced by filing with the Clerk of the Supreme Court a certified copy of the order of determination of the Board attached to the petition by the complainant wherein the complainant shall make his assignments or specifications as to wherein said order or decision is erroneous or illegal. Such action shall be subject to the law and practice applicable to other civil actions cognizable in said court, except as otherwise provided by the rules of said court. Upon final determination of said action in which the order of determination of the Board is sought to be reviewed, the Board shall make an order of determination in accordance with the judgment or decision of said court. The Board shall not be liable for any costs of said proceeding, but otherwise the costs shall be assessed as in other cases.

**Section 1078: Continuing study of water laws–Recommendations and proposals.–** In addition to its other powers, the Oklahoma Water Resources Board is authorized and directed, within the limits of funds available to it, to engage in a continuing study of the water laws of this State, and of changes therein required in order to carry out to the greatest practicable extent the policies announced in House Joint Resolution No. 502 of the Twenty-sixth Oklahoma Legislature, and to make recommendations and prepare proposed leg-

islation for such purposes. Such recommendations and proposed legislation shall, as they are completed, be filed with the Legislative Council.

**Section 1079: Cooperation.**—All State institutions, agencies, departments, boards, and officers are hereby authorized and directed to cooperate with the said Board in all matters relating to its duties under this Resolution.

## Chapter 11, 1961, Title 82.
## OKLAHOMA GROUND WATER LAW
### Oklahoma Ground Water Law

**Section 1001: Short Title.**—This Act may be cited as the "Oklahoma Ground Water Law."

**Section 1002: Definitions.**—In this Act, unless the contex clearly indicates otherwise, the term "ground water" shall mean water under the surface of the earth regardless of the geologic structure in which it is standing or moving; it does not include water flowing in underground streams with ascertainable beds and banks.

The term "ground water basin" shall mean land overlying, as nearly as may be determined by known facts, a distinct body of ground water but the exterior limits of a ground water basin shall not be deemed to extend upstream or downstream beyond a defile, gorge or canyon of a surface stream or wash.

"Ground water subdivision" shall mean an area of land overlying, as nearly as may be determined by known facts, a distinct body of ground water; it may consist of any determinable part of a ground water basin.

"Critical ground water area" shall mean any ground water basin as herein defined, or any designated subdivision thereof, not having sufficient ground water to provide a reasonable safe supply for domestic, municipal, industrial, irrigation, recreational, and other beneficial uses in the basin at the then current rates of withdrawal.

The term "waste" shall mean: (a) Taking or using ground water in any manner so that the water is lost for beneficial use. (b) Transporting water from a well to the place of use in such a manner that there is an excessive loss in transit. (c) Permitting any ground water to reach a pervious stratum and be lost into cavernous or otherwise pervious materials encountered in a well. (d) Permitting or causing the pollution of a sweet water strata or basin through any act which will cause water polluted by minerals or other waste to filter or otherwise intrude into such a basin.

The term "Board" shall mean the Oklahoma Water Resources Board.

The term "person" shall mean individuals, municipalities, corporations and copartnerships.

**Section 1003: Declaration of policy.**—It is hereby declared to be the public policy of this State, in the interest of the agricultural stability, domestic, municipal, industrial and other beneficial uses, general economy, health and welfare of the State and its citizens, to conserve and protect the ground water resources of the State and for that purpose to provide reasonable regulations for the taking and use of ground water.

**Section 1004: Domestic purposes and watering of stock.** Nothing in this Act shall be deemed to apply to or prevent the taking and using of ground water for domestic purposes or for the purpose of watering of stock provided that ground water shall not be taken or used for such purposes in a manner which constitutes waste as defined in this Act.

**Section 1005: Priority.**—Priority of claims for the appropriation of ground water except as hereinafter provided, shall be determined by priority in time. All claims based on actual taking of ground water for beneficial use prior to the effective date of this Act shall relate back to the date of placing ground water to beneficial use and all claims for the beneficial use of ground water initiated after the effective date of this Act shall relate back to the filing of an application with the Board.

The priority of claim to appropriate ground water based on the actual taking and placing of ground water to beneficial use, prior to the effective date of this Act, as provided in this Section, shall be lost unless ground water is actually taken and placed to beneficial use within five (5) years from the effective date of this Act, providing that:

(a) Within two (2) years after filing an application with the Board, the applicant has begun construction of the works to put the water applied for to beneficial use.

(b) Within three (3) years after the filing of the application, applicant has put twenty-five percent (25%), or more, of the water applied for to beneficial use.

(c) Within four (4) years after the filing date of the application, applicant has put seventy-five percent (75%), or more, of the water applied for to beneficial use.

(d) Within five (5) years after the filing date of the application, applicant has put one-hundred percent (100%) of the water applied for to beneficial use.

Where the amount of ground water actually taken and placed to beneficial use within five (5) years after the effective date of this Act is less than the amount of ground water claimed by virtue of such prior taking, then such claim shall be effective only for that amount of ground water actually taken and placed to beneficial use within such time.

Provided that for good cause shown, such as engineering difficulty or for any other valid reason over which the applicant has no control, the Oklahoma Water Resources Board may extend the time for construction an additional two (2) years beyond the five (5) year period provided herein, or in the case of National emergency when materials are not available for the construction of works proposed additional time may be granted beyond the two-year extension to cover the period of such emergency.

**Section 1006: Application to board.**—In order to establish priority of a claim to appropriate ground water in a ground water basin in which there has been no court adjudication of existing rights to appropriate ground water, application must be presented to the Board on forms provided by the Board setting forth the legal description, the use for which the ground water is to be taken, the amount of water to be taken, together with such other information as may be required by the Board. Upon receipt of such application, the Board, if it finds that such application is in satisfactory form as required by this Act and the rules and regulations of the Board, shall officially file the application and notify the applicant of such filing.

The priority of claim to appropriate ground water, established by filing an application with the Board, as provided in this Section, shall be lost unless ground water is actually taken and placed to to beneficial use within five (5) years from the filing of such application, and when the amount of ground water actually taken and placed to beneficial use within five (5) years, as provided in Section 5 of this Act, from the filing of such application is less than the amount of ground water claimed in such application, then the claim shall be effective only for that amount of ground water actually taken and placed to beneficial use within such time.

**Section 1007: Designation and alteration of critical ground water areas—Surveys—Cooperation with other Agencies.**—When the Board has reason to believe it necessary and in the public interest, it may, on its own motion, initiate the designation of critical ground water areas or alter the boundaries thereof, or the Board may take this action upon receipt of a petition signed by not less than twenty-five (25) or one-fourth (¼th), whichever the lesser number, of the users of ground water within the exterior boundaries of the ground

water basin, or subdivision, wherein the areas proposed to be included in such critical ground water area is situated.

The Board shall make or cause to be made surveys of the ground water of the various basins of the State, using such facts and data as may be available and shall determine the area and the safe annual yield measured by the average annual recharge of such basin. The Board is authorized to cooperate with the agencies of the Federal Government engaged in making such surveys and may accept and use the findings of other agencies of the Federal and State Governments as a basis of its decisions.

**Section 1008: Suits to adjudicate rights.**—Upon the completion of a survey of any ground water basin, the Board shall deliver a copy thereof, together with copies of all data necessary for the determination of all existing rights to the use of ground water in such ground water basin, to the Attorney General who shall within sixty (60) days thereafter enter suit on behalf of the State for the determination of all existing rights to the use of such water, in the District Court of the County in which the ground water basin is located, and in cases where a ground water basin is located in two (2) or more counties, in the District Court where the larger part of such basin is located, and shall diligently prosecute the same to a final adjudication; provided, that suits for the adjudication of such rights may be commenced by private parties, and, in such cases, the Attorney General shall not be required to bring such suits; provided, however, that the Attorney General shall intervene in any suit for the adjudication of rights to the use of water on behalf of the State if notified by the Board that in its opinion the public interest requires such action.

**Section 1009: Setting date for hearing—Notice.**—When a suit for the determination of rights to use ground water shall have been commenced, as provided in Section 8 of this Act, the court shall set a date for hearing and shall direct that at least fifteen (15) days notice thereof shall be given by publication in the county or counties in which the ground water basin is located in a newspaper or newspapers qualified to publish legal notices in such county or counties, and by mailing notices thereof by registered mail to all persons known to be using ground water in such ground water basin for other than domestic or stock-watering purposes, and by mailing notices thereof by registered mail to all persons who have filed applications with the Board under Section 7 of this Act to establish priority of claims to appropriate water from such ground water basin, and by mailing notices thereof by registered mail to all incorporated municipalities within a radius of twenty-five (25) miles of the ground water basin.

**Section 1010: Hearing and adjudication.**—At such hearing the court shall hear evidence and make findings thereon, which shall be entered as a decree, as to the area, safe yield and annual recharge of the ground water basin; the priority of existing claims of all persons to appropriate the water of such ground water basin; the amount of each such claim; and as to all other matters necessary to adjudicate the existing rights of all persons in such ground water basin.

**Section 1011: Filing copy of decree.**—A copy of the decree of the court shall be filed with the Board and in the office of the County Clerk of each county in which such ground water basin is located.

**Section 1012: Appeal from decree.**—The decree of the court may be appealed to the Supreme Court as in other civil proceedings.

**Section 1013: License or permit to appropriate water—Prevention of waste.**—After a court adjudication of existing rights in a ground water basin, as provided in Sections 9 to 14, inclusive, of this Act, is completed, the remaining ground water subject to appropriation, if any, may be taken only after securing a license from the Board. Application for a license to appropriate water from such a basin shall be made on forms prescribed by the Board setting forth the description of the basin, the amount of water to be taken, the purpose for which the water is to be used and such other information as the Board may prescribe.

If the Board finds that there is unappropriated ground water, that the applicant can place such unappropriated ground water, or part thereof, to beneficial use and that the applicant has a prior claim to appropriate such ground water, the Board shall issue the applicant a license to place such previously unappropriated water to beneficial use in accordance with the rules and regulations of the Board.

The priority of claim to appropriate ground water, based on a license from the Board, as provided in this Section, shall be lost unless ground water is actually taken and placed to beneficial use within five (5) years, provided that:

(a) Within two (2) years after the issuance of a license or a permit by the Oklahoma Water Resources Board, the applicant has begun construction of the works to put the water specified in such permit or license to beneficial use.

(b) Within three (3) years after the date of issuance of permit or license, the applicant has put twenty-five percent (25%), or more, of the water specified in said permit or license to beneficial use.

(c) Within four (4) years after the issuance of such permit or license, applicant has put seventy-five percent (75%), or more, of

the water specified in said permit or license to beneficial use.

(d) Within five (5) years after the issuance date of said permit or license, the applicant has put one-hundred percent (100%) of the water specified in said permit or license to beneficial use.

Provided that the Oklahoma Water Resources Board may extend the time for completion or construction of works for placing the water to beneficial use to two (2) years beyond the time allowed in Section 1 of this Act for good cause shown, such as engineering difficulty or other valid reason over which the applicant has no control, or in case of National emergency when materials for construction of works are not available additional time may be granted beyond the two (2) year extension to cover the period of such emergency.

When the amount of water actually taken and placed to beneficial use within five (5) years from the issuance of such license is less than the amount of ground water permitted to be taken under such license, then the license shall be effective only for that amount of ground water actually taken and placed to beneficial use within such time.

In cases where a permit is sought to withdraw ground water from a basin for air conditioning or cooling purposes the Board may require that such applicant provide facilities to aerate and re-use such water to reduce waste. The Board is authorized to require of all applicants that they will not waste such water, as defined in this Act, through faulty transportation lines or otherwise and in cases where the use of such water permits, the Board may require that after use it be returned to the basin from which it is extracted.

No permit shall be issued by the Board for the extraction of water from a basin if the findings of the Board indicate that such use would result in depletion above the average annual ratio of recharge.

No permits shall be issued to an applicant who does not own the land above such basin or hold a valid lease from the owner of such land permitting withdrawal of water from such basin.

In cases where an applicant desires to extract large quantities of water from a basin and before issuing a permit, the Board is authorized to determine and order a proper spacing of wells which in its judgment is necessary to an orderly withdrawal of water in relation to the average annual recharge of the whole basin. The Board is also authorized to require that water extracted in large amounts be metered and that such meter be placed under the seal of the Board subject to reading by the agents of the Board at any time and to require that the applicant report the reading of such a meter at reasonable intervals.

In issuing a permit, where field examinations of a basin indicate that water impregnated with minerals is located above a sweet water basin, then the Board shall require the applicant to contract

that he will properly case in such impregnated strata and take all other necessary precautions to protect the sweet water basin from intrusion of polluted water.

The Board is hereby authorized to enforce all necessary regulations to stop the waste of ground water, not only as regards new applicants but also as to existing persons whose rights have been confirmed and adjudicated.

**Section 1014: Appeal from decision of board on application for permit.**—Any applicant, under Section 13 of this Act, who is dissatisfied with the decision of the Board may appeal to the District Court in which the adjudication of the rights to take ground water was held. Said appeal shall be taken by filing a petition for hearing de novo in the district court where the land is situated within thirty (30) days after the decision of the Board. The notices and proceedings for such hearing and adjudication shall be the same as that required by Section 9, herein, for hearing on the determination of water rights.

**Section 1015: Cessation of withdrawal when yield insufficient.**—In any ground water basin in which the withdrawal of ground water exceeds the annual yield as determined by the court under the provisions of this Act, the Board shall have the power to require persons to cease such excessive withdrawals in reverse order of their priority of rights.

If, after reasonable notice and an opportunity for hearing is given a person withdrawing water from such a ground water basin, the Board finds that the safe annual yield of such basin is being withdrawn by other persons having higher priorities, the Board shall issue an order requiring such person, or persons of lesser priority of right, to cease withdrawing ground water from such basin.

Any person who fails or refuses to obey such order shall be guilty of a misdemeanor and shall be punishable by a fine of not less than Twenty-five Dollars ($25.00) and not more than Two Hundred Fifty Dollars ($250.00) and each day shall constitute a separate offense.

Upon the failure or refusal of any person to obey such an order, the Board may obtain an order from the District Court of the county in which the water is withdrawn by such person requiring the Sheriff of such county to stop such withdrawal.

**Section 1016: Rules and regulations.**—The Board shall prescribe and enforce reasonable rules and regulations consistent with this Act governing the drilling, casing, repairing, plugging and abandonment of ground water wells.

**Section 1017: Partial invalidity.**—If any provision of this Act, or the application thereof to any person or circumstance, is held unconstitutional, the remainder of the Act, or the application of such provisions to other persons or circumstances, shall not be affected thereby.

**Section 1018: Violations of act, rule or regulation—Commission of waste.**—Any person who after notice from the Board violates or refuses or neglects to comply with any provision of this Act, or of any rule or regulation promulgated by the Board pursuant thereto, or who commits waste as defined in this Act shall be guilty of a misdemeanor, and upon conviction shall be fined not less than Twenty-five Dollars ($25.00) nor more than Two Hundred Fifty Dollars ($250.00) for each offense. Any person who after notice that he is in violation thereof, continues to violate any provision of this Act, and fails to comply therewith within a reasonable length of time, is guilty of a separate offense for each day the violation continues.

**Section 1019: Powers or functions of certain state agencies not affected.**—It is specifically understood that nothing in this Act shall be construed to limit, modify or repeal in any way the powers, duties or functions of the State Department of Health, the State Board of Health, or the Corporation Commission, insofar as the as the same relate to the subject matter thereof.

# TEXAS

# LAWS, AGENCIES, AND PROGRAMS

pertaining to

# WATER AND RELATED LAND RESOURCES

Compiled by

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TEXAS

LAWS, AGENCIES, AND PROGRAMS

pertaining to

WATER AND RELATED LAND RESOURCES

## A. STATE LAW

### 1. Fundamental Precepts of State Water Law

Texas water policy has been influenced by the Civil Law of Spain, and Mexico, the Common Law of England through reception statutes, the enactments of the Republic of Texas, and later by those of the Texas State Legislature. Article XVI, Section 59 of the State Constitution embodies the principle that the State has the right and duty to develop and conserve its water resources. The Legislature has the power to pass all laws consistent with the general policy as stated by the constitutional provision.

Article 7467 Vernon's Annotated Texas Civil Statutes reserves to the State title to waters of (1) streambeds and their underflow, (2) lakes, (3) bays or arms of the Gulf of Mexico and (4) the storm, flood or rain waters of every river or natural stream, canyon, ravine, depression or watershed within the State. Beds of navigable waters in Texas are also property of the State.

### 2. Water Rights

#### a. Water Right Doctrines Recognized in Texas

Two basic doctrines of surface water rights are recognized in Texas, the Appropriation doctrine and the Riparian doctrine. The corresponding water rights perfected under these are commonly referred to respectively as

appropriative rights and riparian rights. The riparian right arises by operation of common law concepts as an incident to the ownership of land abutting a stream or water course, requiring no act other that the acquisition of title to the land (but see the discussion of Water Rights Adjudication Act of 1967, beginning on page 14). The appropriative right, on the other hand, is regulated by statute. It is not necessarily related to the land ownership and is today acquired by compliance with statutory requirements implemented by the rules and regulations of the Texas Water Rights Commission. Ownership and control over ground water is generally left exclusively to the owner of the surface estate. However, ground-water concepts are currently the subject of review. Modifications and exceptions to basic ground-water doctrine will be discussed later.

b. Surface-Water Law in Texas

Sources of water generally are categorized as surface or underground. Surface water may be classified either as diffused surface water, or as water within a defined watercourse. Diffused surface waters are those which occur in a natural state in places on the earth's surface other than in a watercourse, lake, or pond. A watercourse is defined as an identifiable natural stream having a definite natural channel originating from a definite source of supply; waters in a watercourse may be subclassified as (a) ordinary or normal flow, (b) underflow, and (c) storm and flood water, as follows:

> (a) The ordinary or normal flow of a watercourse has been judicially defined as a flow below the line "which the stream reaches and maintains for a sufficient length of time to become characteristic when its waters are in their ordinary, normal and usual conditions, uninfluenced by recent rainfall or surface runoff." [Motl v. Boyd, 116 Tex. 82, 286 S.W. 458 (1926)].
>
> (b) The underflow consists of water in the sand, soil and gravel immediately below the bed of an open stream, which supports the surface stream in its natural state or feeds it directly, together with the water in the lateral extensions of the subterranean water-bearing material on each side of the surface channel.

(c) The storm and flood water is primarily the collected diffused surface water from recent precipitation.

The legal distinction between ordinary flow, underflow, and storm and flood flow is particularly significant in reconciling conflicting claims to the same water supply, which arise because of the dual recognition in Texas of both riparian and appropriation doctrines. The riparian right concept relates to and is concerned only with the ordinary flow and underflow of a stream. A riparian right does not attach to that portion of a stream comprised of storm and flood flow, and therefore generally will not attach to waters impounded by large reservoirs.

Diffused surface waters are considered to be private waters and are subject to capture and use by the owners of the surface estate. No State regulation of use is exercised with respect to diffused surface water until it reaches a watercourse.

(1) The Riparian Doctrine

Although not defined in Texas statutes, riparian rights are mentioned in legislative acts. Some of these statutory references appear contradictory.

In 1840 the Republic of Texas adopted the Common Law of England as the rule of decision insofar as it was not inconsistent with the Constitution and Acts then in force. The judicial application and recognition of the riparian right concept in Texas began in 1856 with what is probably the first reported Texas court decision involving any phase of water law. (See Haas v. Choussard 17 Tex. 588). In this case, the court quoted with approval the classic common law riparian doctrine that, except for his natural wants, a riparian user could not diminish the quantity of water in a stream that would otherwise flow past downstream riparian owners.

A subsequent series of court decisions created considerable contradiction and confusion. Initially, the courts held that irrigation was a natural

use and that downstream riparian owners could not complain if upstream riparian owners consumed the entire water supply for irrigation. This was followed by contradictory decisions that irrigation was not a natural use of water, but was an artificial use. Still later, the courts held that if a particular stream were sufficiently large to permit irrigation without unreasonable impairment of the rights of downstream riparian owners, the use of water for irrigation would be lawful. In 1926 the entire subject of riparian and appropriative rights was considered by the Supreme Court of Texas in the case of Motl v. Boyd. The court concluded that since the Mexican decree of 1823, all of the several governments which had been sovereign in the State had recognized the right of the riparian owner to use water, not only for his domestic and household use, but for irrigation as well. The riparian right was held to attach to the ordinary or normal flow of a watercourse.

However, in 1962 the State Supreme Court, in the case of Valmount Plantations et al v. The State of Texas, held that Spanish and Mexican grants do not have appurtenant riparian irrigation rights in the absence of specific grants of irrigation water.

(2) The Appropriation Doctrine

(a) Historical Evolution of the Appropriation Doctrine

The Appropriation Doctrine evolved in the arid western states of the United States, from whence Texas water statutes were largely borrowed. Nevada, Colorado, and particularly Nebraska, contributed substantially to the text of early Texas water law. An understanding of the historical setting for early legal development is essential in relating water law concepts to present day planning problems.

With the exception of Texas and the comparatively small areas included in Spanish and Mexican land grants, the Western United States (from whence later

Texas appropriation law was borrowed) was a part of a vast public domain administered and distributed by the United States government. In those vast areas, the federal government did not assert the same ownership of public water as it did of public land. Hence, the land was disposed of without regard to available water. Rights to streams were not acquired by any orderly or systematic administrative procedure.

The failure of the federal and state governments to assert control over streams and dispose of them as a great public resource left water to be treated as though it belonged to no one, and could be appropriated in a manner similar to that of a gold claim. In the absence of public control, men took water from streams and used it; that is, they "appropriated" it--using the word "appropriate" in its ordinary sense: to take for one's own use. When water laws were enacted, this appropriation practice was legalized and the basis of such laws became known as the Doctrine of Appropriation. This concept is contrary on the one hand to the common law doctrine of riparian right (which strictly construed demands that water must not be taken from the stream unless it can be returned undiminished in volume), and on the other hand, to a public policy of permanent governmental control under a system whereby all water is disposed of by license, which had been adopted in some European countries, the British Colonies, and a few of the arid states.

Originally the Appropriation Doctrine was simply that anyone needing water had the right to take it. Changed conditions in the West, resulting from population growth and the consequent increase in demand for water, produced many limitations and modifications. Early definitions of appropriations contained in court decisions do not agree. The following is a synopsis of early concepts and doctrines which, in combination, form the basis of the Appropriation Doctrine:

(i) Doctrine of Priority.--Justice seemed to demand that when there was not water enough for all, those who first used water from a stream should have the superior right to continue that use, and the Doctrine of Priority resulted. The doctrine originated with the belief of the first settlers that their claims were superior to those of later comers, and they insisted that the owner of the last ditch or facility built should be the first to suffer when a stream failed to supply the needs of all. The first builders of water facilities could not anticipate how many were to follow. Unless protected by some such principle, the greater their success, the sooner they would be injured by the attempts of others to benefit by their experience. The general principle, that among appropriators the first in time is the first in right, is now a recognized rule in the water laws of the arid region and was so recognized by the end of the last century.

(ii) Doctrine of Relation.--Since many ditches were built about the same time, it became necessary to prescribe rules in determining when a right should attach. If the right should date from the time of actual use of the water, a premium would be placed upon poor construction. It might happen that during the construction of a large canal, smaller canals or those more easily built might be begun and completed and appropriate all water, leaving the large canal a total loss to its builders. To avoid this, the Doctrine of Relation was adopted; that is, the right does not date from the time the water is used but relates back to the time of the beginning of the work.

(iii) Modification as to Due Diligence.--To prevent abuse, the doctrine of relation discussed above was modified by the provision that the work of construction must be carried on with "due diligence." Under the Doctrine of Relation, a water right is initiated when the work of construction begins, and dates from that time, but is not perfected until the water has been actually diverted and used. The question of "What is due diligence?" is a question of

fact to be determined in each particular case, and when such diligence is not exercised, the right dates from the time of use.

(iv) Beneficial Use--Limit as to Quantity.--As scarcity of water led to the adoption of the Doctrine of Priority, the two led to the necessity of defining the quantity of water to which an appropriator should be entitled. While the early appropriators were entitled to protection in their use of water, the later comers had equal claim to protection from an enlargement of those uses. The first appropriator had the first right, but he did not have the right to take all the water he might want an any future time. His rights must, in justice to others, be defined as to quantity as well as to time. In theory, "beneficial use" has been made the measure of a right as to quantity. What constitutes "beneficial use," and the determination of the quantity of water so used, is left to the courts in most states.

(v) Notice.--With the adoption of the Doctrine of Priority, the need to provide notice of the extent of rights already acquired became apparent. Such notice was needed both for the protection of the rights already in existence, and as a warning to intending investors of the extent to which the stream waters had been preempted.

Initially, most western states, except Colorado and Texas, required the actual physical posting of a written notice at the intended point of diversion. While this procedure was undoubtedly an adaptation of the system of "posting" a gold or mineral claim with a physical monument containing a written description of the claim, there is little similarity between a stationary gold claim and the fluid movement of water on its way to the sea.

The diversion of water without any official record of the time or place of use produced much confusion and hardship when it became necessary to determine the priorities and amounts of appropriations. In early years, the absence of official records meant that facts which governed rights in the stream had to be

established by testimony. Often this determination was required many years after the irrigation appropriation had begun and continued for several generations. Eyewitnesses to the early development frequently were unavailable. The memory of those actually present was often faulty. Wide discrepancies regarding the dates of beginning the work, the size of the ditches, and the amounts of water used were the rule rather than the exception.

To achieve greater permanence, and to afford something approaching actual notice, most State statutes eventually required public registration of the claim in the office of the county clerk. Inadequate supervision coupled with poor understanding of the law by appropriators resulted in a "system" whereby all one need do to claim his own stream or river was present a proper fee to the registry official with a document setting forth his claim.

Many streams in Texas have appropriations many times the available yield. Sometimes cities claimed entire rivers without regard to earlier established concepts requiring "beneficial use." Disregard, carelessness, and misunderstanding of the law and its requirements evolved into habit, habit into community-accepted custom, and custom in some instances became generally but erroneously accepted as law. Throughout the arid western states, it is today common for holders of these early filings to flaunt them as superior vested rights--absolute and secure against the State--when there exists no relation between "beneficial use" and the appropriation claimed, and the requirement of "due diligence" has been completely disregarded.

(b) Development of Appropriative Rights in Texas

Prior to the 1870's, Texas water legislation was limited to a number of special laws granting franchises to particular canal companies and individuals for the construction of dams and canals to utilize specified quantities of water for beneficial purposes, and to an 1852 Act giving each County

Commissioners Court administrative control over water distribution systems within the county.

The Private Corporations Act of 1871 permitted the organization of canal companies for the purpose of irrigation. Acts were passed in 1875 and 1876 which authorized the donation of public lands to canal companies for canal construction. These Acts were later construed to mean that the act of incorporating a canal company authorized the company to acquire a right to use water, but did not actually confer the perfected right.

The first effort to establish the doctrine of Prior Appropriation within the State was made in the Irrigation Act of 1889. This statute was rewritten and reenacted in 1895. Both Acts declared that the unappropriated waters of every river or natural stream, within the arid areas of the State where irrigation was necessary for agricultural purposes, were the property of the public and subject to appropriation. A system of registration was established which required the filing of a sworn statement or "certified filing," describing the proposed appropriation of water. The statements were to be filed with a county clerk in the county where the point of diversion was to be located. As between appropriators, the first in time was to have a prior claim to a given water supply.

In 1913, the Texas Legislature completely rewrote laws relating to the use of water. The new act extended the classical system of prior appropriation to the entire State whereas the Acts of 1889 and 1895 had applied only to the arid portions of the State. A most important feature of the new act was the establishment of a Board of Water Engineers with original jurisdiction over all applications to appropriate water. That agency has functioned since 1913, having been renamed the Texas Water Commission in January 1962 and the Texas Water Rights Commission effective September 1, 1965.

(i) Certified Filings.--The 1913 Irrigation Act required everyone who had constructed or partially constructed a system for the diversion and use of water to file a sworn statement describing the system with the county clerk of the county where the point of diversion was located, if they had not previously done so in accordance with the Acts of 1889 and 1895. The act also required anyone who had actually taken or diverted water for beneficial use prior to January 1, 1913, to file a certified copy of the previous statement recorded in the county clerk's office with the Texas Board of Water Engineers, together with a sworn statement describing the system and the amount and purpose for which water was diverted and used. An initial time limit of one year for compliance with the provision was later extended to 1916. The Act provided that those who filed with the Board "shall, as against the State, have the right to take and divert such water to the amount or volume thus being actually used and applied."

Together, the two statements filed with the Board came to be known as "Certified Filings" and are now so defined by statutes. Many of these filings declared an intent to irrigate several hundred thousand acres of land. Many of these large filings were never developed in accordance with the sworn statement describing the irrigation system, nor have the vast acreages been irrigated. Some of these undeveloped certified filings have been cancelled by subsequent action of the Texas Water Rights Commission. The extent to which other undeveloped certified filings should be recognized as vested rights to water use remains one of the several unresolved questions affecting optimum development of the water resources within the State. It is a matter of conjecture as to how many of these early rights could be maintained in litigation today since many declared appropriations (1) never attached by virtue of the Doctrine of Due Diligence, or (2) were never limited as to quantity measured by "beneficial use," or (3) have been abandoned.

(ii) Appropriation Permits.--The Irrigation Act of 1913 was revised and reenacted in 1917. A principal feature of the Act of 1917 authorized the Texas Board of Water Engineers to adjudicate water rights. This provision of the Act was held unconstitutional in 1921. The Act of 1917, without adjudicative provision, was reported in the 1925 revision of the Texas Civil Statutes and, with numerous amendments, remains the statutory basis for appropriative right concepts in the State today.

Present-day statutes retain the cornerstone of the prior appropriation doctrine in that "as between appropriators, the first in time is the first in right." To this cornerstone, the statutes add the following concept of actual beneficial use as a limit to the measure and extent of a perfected water right: "Rights to the use of water acquired under the provisions of this chapter shall be limited and restricted to so much thereof as may be necessarily required when beneficially used for the purposes stated in this chapter, irrespective of the capacity of the ditch or other works, and all the water not so applied shall not be considered as appropriated." Beneficial use is defined as "the use of such a quantity of water, when reasonable intelligence and reasonable diligence are exercised in its application for a lawful purpose, as is economically necessary for that purpose." (Article 7476, V.A.C.S.)

In 1931, a proviso was added that all appropriations of water for any purpose other than domestic and municipal purposes "shall be granted subject to the right of any city, town, or municipality ... to make further appropriations of said water thereafter without the necessity of condemnation or paying therefor, for domestic and municipal purposes ...." The Rio Grande waters are specifically excluded.

In Texas today, anyone who desires to appropriate water must make an application in writing to the Texas Water Rights Commission. The Commission, as a regulatory agency with broad discretionary powers, is charged with the

administration of rights to the water resources of the State. The Commission consists of three members appointed by the Governor for six-year terms, with the consent of the Senate. The Chairman is designated by the Governor.

The Rules and Regulations and Modes of Procedure of the Texas Water Rights Commission prescribe the procedures for applying for a water permit. The Commission will consider an application for approval if the application is in proper form, complies with statutory provisions, contemplates an authorized use of water, does not impair existing water rights or vested riparian rights, and is not detrimental to the public welfare.

After approval of an application, the Commission issues a permit giving the applicant the right to take and use water only to the extent stated. Permits may be "regular," "seasonal," "temporary," or "contract" in nature. A "regular" permit is permanent in nature and does not limit the appropriator to the taking of water during a particular season or between certain dates. A "seasonal" permit is also permanent in nature, but the taking of water is limited to certain months or days during the year. A "temporary" permit is granted for a period of time not exceeding three months and does not vest in the holder any permanent right to the use of water. A "contract" permit is granted for a stated duration and governs the use of water to be obtained from the storage facilities owned by another person or entity. A "contract" permit requires a written consent agreement or contract with the owner of the facility.

The Water Rights Commission may also grant permits for the impoundment and storage of water with the use of the impounded water to be determined as a later date by the Commission.

Once the right to the use of water has been perfected by (1) issuance of a great permit from the Texas Water Rights Commission and (2) subsequent beneficial use of the water by the permittee, the water authorized to be appropriated under the terms of the particular permit is not subject to further

appropriation by the Commission until the permit is cancelled. Formal cancellation of unused permits and certified filings is possible either by administrative action initiated by the Commission or by judicial proceedings to adjudicate water rights between claimants. Cancellation by administrative action has, in the past, been difficult in the typical situation because of inadequacies in cancellation statutes. However, the recently enacted Water Adjudication Act of 1967 is expected to facilitate the administrative process. Adjudication by the courts frequently does not provide the flexibility of action, the geographic coverage, or the inclusion of all parties desirable from the State's view.

Article 7500a allows a landowner to construct a small reservoir on his own property to impound not more than 200 acre-feet of water for domestic and livestock purposes only, without securing a permit. A simplified, short-form application for a permit to appropriate water for other than domestic and livestock purposes is available to the owner of a small reservoir of this size. Permits granted by the Texas Water Rights Commission pursuant to this statute may be for a period of years.

After considering the practical difficulties encountered by pioneer water appropriators in perfecting their claim, and analyzing the concepts they evolved as necessary aids to determine water rights--which concepts Texas Legislatures have codified as appropriation statutes--it is apparent that certain elements are inevitably present in every perfected water right under the nonriparian concept of appropriation, i.e., under the Appropriation Doctrine.

These elements are: (1) A definite point in <u>time</u> at which the claimed right can be said to have <u>attached</u>, in other words, a time of attachment. The doctrines of Priority and Relation, the latter as modified by the requirements of due diligence, relate to the time of attachment. (2) A definite <u>limitation as to quantity</u>. The "declared" appropriation must be considered with and governed by the "actual" appropriation, as measured by actual beneficial use.

(3) Adequate notice to subsequent appropriators in accordance with prescribed customary procedure.

The absence of any one or more of these elements must cause an asserted claim or right to fail. The Doctrine of Abandonment results in forfeiture or loss, as would estoppel (Motl v. Boyd, discussed earlier) and prescription. The procedure by which an agency of the State issues a permit to appropriate public waters is a mere extension of the concepts underlying and embodied within earlier appropriative processes, and the later certified filings. Time of attachment, limitation--both declared and actual (that is, the appropriative limit declared within the permit document, and actual appropriation as measured or limited by actual "beneficial use")--, and notice are current requirements for the perfection of a water right by means of a statutory permit.

(3) The Water Rights Adjudication Act of 1967

This recent statute modifies claims of right to public water under the riparian doctrine or water impounded under Article 7500a for other than domestic or livestock purposes. It is incumbent upon the user to file a statement, including the nature of right claimed and volume of water used, with the Texas Water Rights Commission before September, 1969. Failure to file such a sworn statement will result in an extinguishment of such right, and bar any claim thereon. The act further provides for adjudication of rights in any stream, upon the Water Rights Commission's own motion, or upon petition by ten or more claimants of rights, or upon petition by the Water Development Board.

c. Ground-Water Law in Texas

As a prelude to discussion of the ground-water law of Texas, it is desirable to understand the term "ground water" as defined by statute and case law. A more accurate term would probably be "percolating waters."

(1) Percolating Water Theory

"Percolating waters" are defined as those waters below the surface of the ground not flowing through the earth in known and defined channels, but are waters percolating, oozing, or filtrating through the earth. Percolating waters are distinguished from (1) "subterranean streams flowing in well defined beds and having ascertainable channels" and (2) "the ordinary underflow of every river and natural stream of the State."

The state of the law with respect to ownership of subterranean streams flowing in well defined channels is not well settled in Texas. However, "stream underflow" (the water that flows beneath, and alongside of a surface stream channel) is the property of the State (Article 7467). Both stream underflow and subterranean streams have been expressly excluded from the definition of underground water in Article 7880-3c, which recognizes the ownership and rights of Texas landowners to underground water (Section D).

There exists a legal presumption in Texas that all sources of ground water are percolating waters as opposed to subterranean streams. The courts in the past have been reluctant to accept testimony of engineers and hydrologists as conclusively rebutting this presumption. Consequently, the surface landowner is presumed to own underground water until it is conclusively rebutted by a showing that the source of such supply is a subterranean stream or stream underflow, a burden of proof that may be very difficult to meet.

(2) Résumé of Important Cases

The following is a résumé of the limited case law in the ground-water field, showing the chronological development of ground-water law in Texas.

Action v. Blundell 12 M&W 324 (Exch. Chamber 1843): In this early English case, the plaintiff had for years enjoyed the use of a water well situated on his own property in connection with his cotton mill. The defendant excavated

two coal pits within three-quarters of a mile from plaintiff's well, rendering the plaintiff's supply inadequate for milling purposes. The Court held that ground water is not governed by the law relating to rivers and streams, and said (p. 354):

> "... but that it rather falls within the principal which gives to the owner of soil all that lies beneath his surface; that the land immediately below is his property, whether it is solid rock, or porous ground, or venous earth, or part soil, part water; that the person who owns the surface may dig therein, and apply all that is there found to his own purposes at his free will and pleasure; and that if, in the exercise of such right, he intercepts or drains off the water collected from underground springs in his neighbor's well, this inconvenience to his neighbor falls within the description of damnum absque injuria, which cannot become the ground of an action."

Houston & T.C.R.R. v. East, 98 Tex. 146, 81 S.W. 279 (Tex. Sup. Ct., 1904): Plaintiff in this case had for years used a well on his own land for household purposes. Defendant Railroad Company owned the fee simple title to adjacent land on which the defendant dug a well and, with a steam pump, withdrew 25,000 gallons a day to supply its locomotives and machine shops. Plaintiff's well became dry, for which he sought damages.

The Court recognized Action v. Blundell as the controlling rule and discussed opinions of American courts applying the "English rule." The controlling American opinion influencing the Court was the 1861 Ohio case of Frazier v. Brown, 12 Ohio Street 294, which announced the impossibility of administering any set of legal rules governing ground water because no one (in 1861) could say with any degree of accuracy from where ground water came or flowed, where it was going, or how it was to get there. Too, the Court had observed that correlative rights to underground water would unduly interfere with railroad and highway construction, public works, existing health standards, and economically productive mining operations. The Court concluded that in the absence of malice or wanton conduct on the part of the defendant, the law

recognizes no correlative rights with respect to underground waters. The defendant was making a reasonable and legitimate use of the water which he took from under his land.

Texas Co. v. Burkett, 117 Tex. 16, 296 S.W. 273 (Tex. Sup. Ct., 1927): This case involved the legal question of whether or not the plaintiff had the right to convey all right, title, and interest to underground waters beneath his tract. On page 278 of the opinion, the Court states:

> "In other words, insofar as this record discloses, they [the waters] were neither surface water nor subsurface streams with defined channels, nor riparian water in any form, and therefore, were the exclusive property of Burkett, who had all the rights incident to them that one might have as to any other species of property."

Therefore, the Court concluded, his water could be used either on or away from the land surface.

Pecos County W.C. & I.D. Dist. No. 1 v. Williams, 271 S.W. 2nd 503 (Tex. Civ. App., 1954; *error refused n.r.e.*): Plaintiffs had for many years used the spring flow of Comanche Springs for irrigation. Immediately prior to this lawsuit, the defendants drilled numerous water wells south and west of the springs, drying up the springs as a consequence. Plaintiffs alleged that the wells were drilled into a well defined subterranean channel which supplied the springs and that under such facts, the law with respect to percolating water would not apply. The Court, after commenting on the lack of evidence to support this allegation, stated at page 507:

> "So it seems well decided that the mere fact that the wells of one man dried up springs or the wells of another, neither proves nor indicates a well defined channel of underground water."

The presumption that all underground waters are percolating water prevailed, and the Court concluded that plaintiffs were not entitled to enjoin the pumping of defendants wells.

City of Corpus Christi v. Pleasanton, 154 Tex. 289, 276 S.W. 2nd 798, (1955): The Supreme Court held, in the tradition of the East case, that since the Lower Nueces River Water Supply District was the owner of the land on which it had drilled four large artesian wells, which wells were designed to flow, and did flow, into the Nueces River at a rate of 10 million gallons a day, and since the ultimate use of the water was for "a beneficial use" (municipal purposes), in spite of a 63 to 74 percent evaporation loss during an 118-mile trip downstream to the place of ultimate use, the flowing of said wells was not subject to injunction under existing law. The Court stated that the owner of the land could produce all it could capture for use on or off the land so long as the ultimate use was beneficial. This was a 9-3 decision with strong dissents registered by Justice Griffin and Justice Will Wilson, later Attorney General of Texas. Justice Wilson said, in effect, that it was ridiculous to follow 19th Century knowledge of hydrologic and geologic limitations when modern technology could sufficiently answer every question and lay aside every doubt of inquiring jurists.

Marvin Shurbet et ux v. The Commissioner of Internal Revenue, 242 F. Supp. 736, affirmed 347 F. 2d 103, (1961): Mr. Shurbet, acting on his own behalf and that of the High Plains Underground Water Conservation District No. 1, brought suit in the Federal court for refund of income taxes based upon a claim that water supplies from the Ogallala Formation, for which the landowner paid a stated consideration at the time of land purchase, were being permanently depleted. After the Federal Circuit Court of Appeals recognized the validity of the claim, the Internal Revenue Service agreed to follow the opinion. The consequence of this case to other areas of Texas water law may be far reaching. It constitutes specific recognition on the part of the courts and a governmental agency--significantly the Internal Revenue Service--of the unique nature of ground water and its consequent dollar value to the

surface owner. Although limited only to the High Plains Ogallala Formation where the underground water supply is known to be permanently disappearing, the extension of the recognition principle should be much easier with this precedent.

From the East case through Pleasanton, the Texas Courts have followed unequivocally the "English" or "common law" rule that the landowner has a right to take for use or sale all the water he can capture from beneath his land. The court in East deliberately chose not to adopt the "American rule" which is based on "reasonable use" and correlative rights. Consequently, neither an injured neighbor nor the State can effectively exercise any degree of conservation and control over water-use practices involving ground water. This is in contrast with the extensive and direct involvement of the State in conserving and controlling surface-water supplies. The situation is paradoxical when one realizes the interrelationship of ground- and surface-water development for future State needs and the necessity of adequate ground-water supplies to meet future municipal and domestic requirements in certain areas.

While an individual may have little to say about a neighbor's use of a common ground-water supply, landowners overlying defined ground-water reservoirs may adopt voluntary well regulation through mutual association in underground water conservation districts; Article 7880-3c provides the framework for these districts, and to date eight have been formed. Through this voluntary association, effective well spacing, proration, and conservation can be achieved. The locally formed conservation district is likely to continue as the best avenue toward underground water conservation until such time as correlative rights to percolating waters are recognized.

Impairment of a landowner's right in the percolating waters under his land, when this impairment is the result of a trespass on the land, is of course actionable. To date there are only three legal actions available to a

landowner in Texas for outside interference with his percolating water rights. The first is the common law right recognized in jurisdictions which apply the English rule. This right arises when there is malice or wanton conduct with results in a taking for the sole purpose of injuring a neighbor. The second action recognized in Texas arises when artesian flow results in no beneficial use, and as such, is defined as "waste." In the Pleasanton case, the Court found that the loss during transportation of 63 to 74 percent of the water initially captured did not amount to "waste" since the ultimate use was "beneficial." Article 7602 of the Civil Statutes and Article 846 of the Penal Code defines "waste" in relation to artesian wells, and provides, among other exceptions, that waste will not exist if the water is "used for the purposes and in the manner in which it may be lawfully used on the premises of the owner of such well." The third action arises as a result of contamination of the quality of water in a landowner's well. Cases within the third category have arisen mostly in areas where it can be conclusively shown that oil and gas operations have allowed brines, oil, and other substances to escape into the percolating fresh water bearing strata. Continental Oil Company v. Berry, 52 S.W. 2nd 953 (Tex. Civ. App., 1932; error refused).

Although the landowner's right to capture and his right to enjoin waste by his neighbor are recognized, the character of title which vests in the surface landowner once ground water is captured and reduced to possession is not clear. The Supreme Court, in Pleasanton, stated on page 802 that:

> "... an owner of land could use all of the percolating water he could capture from wells on his land for whatever beneficial purposes he needed it, on or off of the land, and could likewise sell it to others for use off of the land and outside of the basin where produced, just as he could sell any other species of property." (Emphasis added.)

Although it appears that this right of capture is accompanied by an absolute right of use, the courts do place limitation on the use to which the

owner can put ground water. "Waste" is a limitation on the owner of a flowing artesian well and, as was stated in the Pleasanton case, the court will look to the ultimate use of the water and if found to be wasteful, equitable remedy may be available.

### 3. Access to Lakes and Streams

Article 7581, V.A.C.S., authorizes employees of the Water Rights Commission to enter private property and any waterway when such entry is necessary to discharge of the Commission's duties.

Although there is no statutory authority granting general public access to lakes and rivers, all public lakes within the State do accomodate recreational needs of citizens. However, a person may not enter upon private lands as a means of access to a waterway, although State law recognizes--with few exceptions--the right of the public to travel up or down the streambed of a navigable stream in those instances where access can be lawfully accomplished, for example, where a public stream intersects or is bridged by a public highway. A "navigable stream" is defined as one averaging 30 feet in width from cut bank to cut bank.

### 4. Transbasin Diversion

Article 7589 and 7590, V.A.C.S., set forth the limitation and procedures for diversion of water from one basin to another. Transbasin diversion is prohibited when it results in prejudicing any person or property in the watershed of origin. These statutes have been relied upon very little in the past, but are expected to have increasing influence in the future. Superimposed on these statutes is Article 8280-9 establishing the Texas Water Development Board, and in particular, §3(b) therein, limiting the Board's planning powers as to interbasin transfer of water to that volume of water in excess of the amount needed to supply the reasonably foreseeable water requirements of the river basin of origin for the next 50 years.

## 5. Eminent Domain

At present, there are inadequate statutory provisions authorizing land acquisition by a State agency for reservoir purposes. To date, most water development projects have been constructed in conjunction with a local political entity possessed with condemnation powers.

## B. STATE ADMINISTRATIVE AGENCIES AND PROGRAMS

Government has come to play an important role in the protection and development of water resources. This role has evolved from one which was primarily regulatory in nature to one which is promotional in character. The governmental institutions of our nation, state, and localities have become positive participants in active programs aimed not only at overseeing private development and guarding against waste, but at developing our natural resources for the public at large. As results of this changing role of government, the administrative organization and the intergovernmental relations are relatively complex. Many local, state, and federal agencies are concerned with different specific water programs.

An inventory of these governmental agencies is here presented in order to show the role of each in the development and administration of water resources, as well as some of the legal bases for intergovernmental relations.

### 1. Historical Development and Statutory Evolution of State Water Agencies in Texas

The history of water legislation in Texas dates back to 1889 when the Texas Legislature borrowed statutory concepts and procedures from Nebraska, Colorado, Wyoming, and other arid western states in an attempt to provide for the orderly distribution and peaceful development of water resources. The primary contenders in 1889 were cattle versus irrigation interests.

Although later attempts at effective legislation were to be made in 1898, it was not until 1913 with the passage of an Act creating the Board of Water Engineers that any real semblance of orderly development of water rights became possible. This Board, created in 1913, was the first State agency concerned with water development and water rights.

The State of Texas was exposed to severe floods in 1913 and 1914, and the citizenry of Texas began to demand a constructive conservation program. There

was open agitation for an amendment to the constitution which would recognize the State's duty to prevent floods, or at least to take steps necessary for the conservation of the State's natural resources. In order to avoid any question as to the State's legal right to regulate the conservation of natural resources, a Conservation Amendment was adopted in 1917, which stated that the conservation and development of all the natural resources of the State were public rights and duties and the Legislature was authorized to pass all laws appropriate for this purpose.

As cities and industries developed within the State, municipal and hydroelectric interests appeared in competition with those of cattlemen and irrigators. Competition over the available and oftentimes uncertain water supply led to the passage of the Wagstaff Act in 1931, which declared beneficial use preferences, as a guide for the Board of Water Engineers in the granting of future water permits. The Act declared in effect that for a given supply of water, domestic and municipal needs must be met first, followed, in their respective order, by industrial needs, irrigation, mining, hydroelectric, navigation, and recreation and pleasure.

In 1957, another constitutional amendment was adopted creating a second Board concerned with water matters, the Texas Water Development Board. The Board consisted of six members appointed by the Governor with only two full-time paid employees. The Board was directed to initiate and administer a program of loan assistance to local political subdivisions, for the purpose of encouraging the development of the State's water resources.

In 1961, the Legislature created yet a third Board, the State Water Pollution Control Board consisting of six members (three members appointed by the Governor and the remaining three members comprised of the agency heads from the State Health Department, the Parks and Wildlife Department, and the Water Development Board). Effective September 1, 1967, the Water Pollution Control

Board was superseded by the Texas Water Quality Board, which is to be composed of the same members. The purpose of the Water Quality Board is substantially the same as that of the Water Pollution Control Board: to effectuate the declared policy of the State to maintain the quality of its waters consistent with the public health and public enjoyment thereof, the protection of wildlife, the operation of existing industries, and the economic development of the State.

In 1962, the Legislature changed the name of the Board of Water Engineers to the "Texas Water Commission" to more accurately reflect the functions and responsibilities of the agency. Thus, in 1962, there existed in Texas three agencies concerned with water administration:

(1) The Texas Water Commission (which was formerly the Board of Water Engineers);

(2) The Water Pollution Control Board--concerned with matters of pollution;

(3) The Texas Water Development Board--concerned only with the financial aspects of developing reservoirs and related facilities, by a program of lending State funds to local political subdivisions.

However, by this time, there had been added to the responsibility of the Water Development Board the additional function of acquiring storage facilities by outright purchase in the name of the State of Texas, as opposed to merely loaning State funds to political subdivisions.

Three years later, in 1965, after a comprehensive two-year study initiated by the privately financed Texas Research League, the 59th Legislature realigned the functions and responsibilities of the Water Commission and the Water Development Board. Beginning September 1, 1965, all planning and development functions which had, by previous statutes, been vested in the Water Commission, were transferred to the Water Development Board. While the Water Development Board had only two full-time employees in 1957, beginning September 1965, Board staff and personnel consisted of 185 authorized positions. Currently

(January 1968), the Board employs 240 persons. Personnel data, records, equipment, and office space formerly occupied by the Texas Water Commission were transferred to the Texas Water Development Board.

The Water Commission retained the primary function of administering water rights, including the issuance of permits, and the name of the agency was appropriately changed to the Texas Water Rights Commission.

Today in Texas, there are three major agencies concerned exclusively with water development, regulation, and control:

(1) The Texas Water Rights Commission

(2) The Texas Water Development Board

(3) The Texas Water Quality Board

As discussed elsewhere, numerous other State agencies have water-oriented interests in addition to other functions.

### 2. Present State Agencies in Texas Water-Resources Programs

Eight State agencies, in addition to river authorities discussed on page 47 are actively engaged in various phases of the State's water-resources programs. In addition, the programs of many other State agencies bear upon the handling of water problems, including several educational institutions which undertake studies and conduct conferences, and the Attorney General's office, which examines the legality of bonds of all local and State agencies and renders advisory opinions on them. The activities undertaken are diversified and far-reaching, and often overlap federal agencies operating in the State. The authority to supervise and coordinate the various local units of government charged with developing and conserving the waters of the State is divided among several agencies, as is the power to plan and coordinate the State's programs. The need for effective administrative planning and coordination will undoubtedly increase as the State continues to grow.

a. Texas Water Rights Commission

In 1913, 14 years after the legislature first enacted the statute providing that waters in the arid section of the State might be appropriated under the doctrine of "first in time is first in right," the predecessor to the Texas Water Rights Commission (the Board of Water Engineers) was established to approve the appropriation, storing, and diversion of the State's waters.

(1) Administrative Organization

The Texas Water Rights Commission is composed of three members, all appointed by the Governor with the consent of the Senate for six-year, overlapping terms, with one term expiring every two years. An Executive Director is the chief administrative officer of the agency and is directly responsible to the Commission.

(2) Functions

The primary objective of the Texas Water Rights Commission, as stated by statute, is "to conserve this natural resource in the greatest practicable measure for the public welfare." In carrying out this mandate the Commission performs a number of functions, including the administration of water rights, the collection of data, the supervision of certain water districts, and other regulatory activities.

(a) Water Rights Administration

The original purpose of Water Rights Commission was the approval of appropriation, storing, or diversion of the State's waters. Such approval was necessitated by the State's adoption, in 1889, of the legal doctrine of prior appropriations, under which nonriparian users could obtain a right to use a certain quantity of water by obtaining a permit from the designated State agency. Under the original acts, these permits to appropriate water were

obtained merely by filing with the county court clerk, but in 1913, the agency was established and was given control over the allocation of the State's waters.

All waters in the State are not, however, subject to appropriation. The vested riparian rights were not affected by this act, and the Board (now Texas Water Rights Commission) had no control over the rights of a riparian user of water. Neither were the rights of landowners to underground water brought within the purview of this act. The Board was authorized to control the allocation of water defined in the statute as:

> "... the waters of the ordinary flow and underflow and tides of every river or natural stream, of all lakes, bays or arms of the Gulf of Mexico, and the storm, flood or rain waters of every river or natural stream, canyon, ravine, depression or watershed within the State of Texas."

The purposes for which water may be appropriated were establihsed by the Legislature in 1913. These are: irrigation, mining, milling, manufacturing, development of power, city water works, and livestock raising. In 1931, a priority list was devised by the Legislature to guide the Commission in its appropriation of the State's waters. This priority list provided the following order: (1) domestic and municipal uses, including water for sustaining both human and domestic animal life; (2) water to be used in processes designed to convert materials of a lower order of value into forms having greater utility and commerical value, and to include water necessary for the development of electric power by means other than hydroelectric; (3) irrigation; (4) mining and recovery of minerals; (5) hydroelectric power; (6) navigation; and (7) recreation and pleasure.

The Legislature has charged that:

> "... it shall be the duty of the [Texas Water Rights Commission] ... to conserve this natural resource in the greatest practicable measure for the public welfare; and recognizing the Statutory precedent established for granting the privilege to take and utilize the waters of the State, preference be given not only in the order of preferential uses declared, but that preference also be given those applications the

> purposes for which contemplate and will effectuate the maximum utilization of waters and are designated and calculated to prevent the escape of public waters without contribution to a beneficial public service."

The important words are "it shall be the duty" and "but that perference also be given those applications the purposes for which contemplate and will effectuate the maximum utilization of waters and are disignated and calculated to prevent the escape of waters without contribution to a beneficial public service." The Commission has interpreted these words to mean that as between applicants with the same priority rights, the concept of "a beneficial public service" would come into consideration. Where an applicant is above another on the priority list, the words "it shall be the duty" require the Commission to appropriate the water solely on the basis of availability.

Another aspect of administration of water rights is the adjudication of conflicting claims. With a dual system of water rights, riparian and appropriative, it is often necessary to adjudicate conflicting rights, and the 60th Legislature enacted the Water Rights Adjudication Act, mentioned earlier, to facilitate administrative adjudication by the Commission.

(b) Other Water Management and Regulation

The Commission has been assigned a number of additional tasks in the management and regulation of the State's water resources. In addition to issuing permits to use the State's waters, two major roles of the agency are to supervise some types of local water districts and to provide assistance in the nature of technical advice and guidance to these local units.

The Commission has a statutory obligation to receive petitions for the creation of multicounty water improvement districts, water control and improvement districts, and underground water conservation districts, or such districts which include sanitation facilities in one or more counties. This statutory obligation also extends to holding hearings on the applications, approval or

disapproval of the petitions, appointment of temporary directors under certain conditions, and furnishing necessary technical data and topographic maps to the petitioners. For underground water conservation districts, the Commission must also designate the boundaries of the underground water reservoir or subdivision thereof before such a district may be created. The Commission also has the responsibility of reviewing the feasibility of projects planned by water control and improvement districts intending to issue bonds to cover the costs of planning or construction of necessary facilities, or both.

It should be emphasized, however, that the Commission does not have jurisdiction over the creation of drainage districts, levee improvement districts, fresh water supply districts, water control and preservation districts, or navigation districts; nor does it have jurisdiction over water control and improvement districts created entirely within one county. Neither does the Commission have regulatory power over proposed plans of bond issues of all types of water districts; it has power only over water control and improvement districts. The Commission, furthermore, does not have a watermaster to determine allotted amounts of water that are diverted, and unless a complaint is made, it has no supervision over actual diversions.

The Commission may, upon granting a permit for the use of water, fix the time at which actual construction shall begin. Further, the Commission may enjoin construction which is in violation of the statutes or of its own duly promulgated rules and regulations. It may also condemn any existing structure which becomes a public menace or is dangerous to life and property.

Frequently, the Commission is also given the responsibility of nominating and appointing officials of river authorities and other special act districts. The Commission also has the responsibility of submitting a list of prospective directors from among whom the Governor may make nominations for certain river authorities. In some instances the statutes provide, as for the Sulphur River

Conservation and Reclamation District, that the Commission and the State Reclamation Engineer shall appoint directors, subject to the Governor's approval.

The Commission, in its regulatory role, acts in some instances as a price-fixing agency. As between private irrigation corporations and riparian water users, it may fix a reasonable price to be paid for the use of water when the corporation and the water user cannot agree. The Commission is authorized to fix the price river authorities may charge for hydroelectric power sold to municipalities or to rural cooperatives.

The Commission also performs duties or conducts investigations pertaining to water resources and water uses which the Governor may direct. Further, where water shortages have existed, the Commission has been requested to divide the meagre river flows between appropriators and to ensure riparian municipalities of a water supply.

The Commission has some functions to perform in the control of water pollution and waste. The statutes authorized it to abate the waste of water from uncapped artesian wells, and to prevent the excessive or wasteful use of water by persons contiguous to any canal or irrigation system. It may declare any water improvement or irrigation work which permits an unreasonable loss of surface water in its operation a public nuisance, and abate it as such.

b. Texas General Land Office

(1) Administrative Organization

The General Land Office has as its head the Land Commissioner, an official elected by the people of the State. He is responsible for the supervision of the work of the department.

(2) Functions

Orginally, the principal duty of the General Land Office was the keeping of records and archives pertaining to land titles, but in the last century it has been given a number of additional responsibilities.

(a) Pollution Control Activities

The General Land Office has some statutory responsibility for pollution control. The Land Commissioner regulates oil and gas development on public lands and seeks to prevent pollution of waters in areas where such development occurs. He is authorized to call upon the Parks and Wildlife Department for assistance in this regard. As for the public Gulf lands within the tidewater limits, the Land Commissioner is charged with the responsibility for promulgating and enforcing rules and regulations for the prevention of pollution. The Commissioner of the General Land Office is not, however, a member of the Water Quality Board.

c. Texas Water Development Board

(1) Administrative Organization

The Texas Water Development Board is administered by a Board of six members, appointed by the Governor with the consent of the Senate for overlapping terms of six years. Each member must have had at least ten years of successful business or professional experience. One member must be appointed from each of the fields of engineering, law, farming, and public or private finance; and two members may be appointed "at large" without reference to occupation.

(2) Functions

(a) Loan and Purchase Functions

The Board was created as an agency of the State of Texas by an amendment to the Constitution in 1957 for the purpose of making loans to local governmental

agencies sponsoring the construction of projects for the conservation and development of water resources of the State. In 1962 and 1966 the Constitution was amended to broaden the Board's power by authorizing it to purchase conservation storage facilities in reservoirs to be constructed on Texas streams and for any system or works necessary for the filtration, treatment, or transportation of water by federal or local governmental agencies to the end that the remaining reservoir sites in Texas may be developed to their optimum potential. Both the loan and purchase programs were designed to be ultimately self-liquidating, although the latter is not expected to acquire that status for some years.

The loan program involves the purchase by the Board of bonds issued by a local governmental agency sponsor (city, water district, or authority) of a water project at a rate of interest which is one-half of the one percent greater than the cumulated effective rate on the Board's own bonds. The loan program was conceived by the Legislature in 1957 as a 25-year program, and provision was made in the act that no loans can be made after December 31, 1982. The self-liquidating quality of the loan program arises from the requirement that all funds coming into the Board's hands from interest on local securities which it has purchased and from the collection of matured principal shall, to the extent required, be used to pay debt service on the Board's own bonds and to maintain the reserve fund therefor.

Under the purchase program the Board acquires what amounts to an undivided interest in storage reservoirs and systems or works necessary for the filtration, treatment, or transportation of water after a finding that (1) there is a future need for each of such water supply projects and that (2) there is no local sponsor or sponsors financially capable of developing such facilities or systems. It is comtemplated that the Board's interests in these storage facilities and associated systems will be salable in the future. Funds from such

sales, which are fixed by law at a price not less than the Board's capital investment plus interest computed at a rate equal to the cumulative effective rate on the Board's bonds at the time of the sale plus one-half of one percent, shall, to the extent required, be used to pay debt service on the Board's bonds and to maintain the reserve fund therefor.

In the acquisition of such storage facilities and associated systems the Board may make a cash payment for an interest in them. When the sponsor for a dam or reservoir is an agency of the federal government, the Board may enter into a long-term contract for the payment of its share.

It is the declared public policy of the State that all reservoir sites should be developed to optimum capacity, and state financial assistance for reservoir development was initially conceived in executing this policy. A corresponding policy, however, will not permit the investment of State funds in any project unless the cost of the project exceeds the current financing capabilities of the area involved, or that such project cannot be reasonably financed otherwise by local interests without State participation.

(b) Collection of Data

In fulfilling its tasks in the management and allocation of the State's waters the Board must undertake various hydrographic studies. Data obtained from such studies help in many projects, such as the planning and design of adequate municipal water supplies, the determination of waters available for irrigation, and the planning of industrial expansion. This hydrographic information is also needed for flood control, development of power potential, soil conservation, protection against stream pollution, designing of highways and other structures, protection of fish and wildlife, and the improvement of navigation. For these reasons, the collection of information about water resources is one of the principal functions of the Board.

Much of the work of data collection is undertaken in cooperation with the U.S. Geological Survey. In general, the cooperative undertakings are handled by personnel of the U.S. Geological Survey, supported by federal funds which are matched by state and local funds. The Board also cooperates with the U.S. Department of Agriculture, the Texas A&M University, and others in studying the duty of water. This consists of studies to determine the optimum irrigation water requirements for typical crops grown under various climatic and soil conditions, the determination of methods of application of water best suited to different crops grown in Texas under given site conditions, and the development of irrigation practices which will increase irrigation efficiency.

Other data collection conducted by the Board includes the following activities: stream measurements of daily, monthly, and annual discharges of the various rivers and streams (in cooperation with the U.S. Geological Survey, the U.S. Army Corps of Engineers, various Texas water districts, and other agencies); ground-water investigations, made to collect information as to location, size, and yield behavior of underground reservoirs and to determine the fluctuations of the water table or changes in artesian pressures; and studies of the quality of water, made to determine the salinity of the waters and the possible sources of pollution, as well as the extent of salt water.

(c) Reclamation Engineer Functions

The Board inherited from the former State Reclamation Department powers to assist and supervise levee improvement and drainage districts. It includes the power of supervision over the creation of districts, passing on the feasibility of plans prior to the issuance of bonds, and the power to inspect the construction of levees and other works of improvement.

The statutes provide that the State Reclamation Engineer shall have the power to make and approve agreements or contracts for cooperating with any

branch of the federal, state, county, or city governments. He is to confer with any branch of the various levels of government to the end of obtaining authority, advice, or assistance in connection with his official work.

The Reclamation Engineer (now Texas Water Devleopment Board) is further charged with the duty of conducting and making surveys, maps, reports, and publications, as may be required in the process of planning such improvements as levees, dikes, canals, dams, drains, waterways, reservoirs, or any improvements incidental to them.

(d) Control of Waste and Pollution

Although the Board has no regulatory power over the pollution of surface or ground water, it works in conjunction with the Railroad Commission in preventing the contamination of fresh water bearing strata by highly mineralized water from oil operations, and with the Water Quality Board in problems of ground-water contamination. The Board also has made a number of studies of the danger of the encroachment of salt water from beneath the Gulf into the fresh-water sands along the Texas coastal region. In its studies of the quality of water, the Board analyzes the water to determine its suitability for irrigation, general farm and ranch supplies, and municipal and domestic supplies. In such studies, the various types of pollution are, of course, among the main factors studied. The Executive Director of the Board is a member of the Texas Water Quality Board.

(e) Comprehensive Planning and Coordination

The Texas Water Development Board recently undertook the task of compiling a comprehensive statewide plan for the development and distribution of available waters. The plan will serve as a flexible guide to the future development of water resources in the State.

d. Texas Soil and Water Conservation Board

The Texas State Soil and Water Conservation Board was created to perform the state-level administrative functions necessary to operate the soil and water conservation district program. Because of the physical unity between soil and water, many of the conservation activities undertaken by the State's Soil and Water Conservation Board vitally affect the water resources of the State.

(1) Administrative Organization

The Board is composed of five members, elected for a five-year term by the supervisors of the subdivisions of the State that they represent. The Board employs an executive director to supervise the agency's activities. The Board's main task is to coordinate the programs and activities of the 184 soil and water conservation districts throughout the State.

(2) Functions

The Board's activities activities are primarily directed along three lines: (1) district program planning and assistance; (2) education and promotion through the use of letters, technical manuals, and group conferences, and (3) participation with the U.S. Soil Conservation Service in the federal upstream watershed program. Coordination of the programs of the several soil and water conservation districts, so far as this may be done by advice and consultation, is another major function of the Board.

(a) Upstream Watershed Program

The Texas Soil and Water Conservation Board has been designated by the Governor as the State agency to receive and approve or disapprove applications of political subdivisions for federal assistance in planning and carrying out watershed protection and flood prevention projects as contemplated under Public

Law 566, Acts of the 83rd Congress, as amended by Public Law 1018, Acts of the 84th Congress.

This federal program seeks to conserve water and soil by beginning the conservation program upstream, where the water falls. Small detention dams are built on river tributaries for this purpose. Under the authorization of these acts, watershed protection and flood prevention work may be carried out on any watershed under 250,000 acres in extent if the project is economically justifiable. The federal government, through the U.S. Soil Conservation Service, pays the entire cost of improvements applicable to flood prevention. Participating local governments bear the cost attributable to the storage of water for use. It is this type of application which the State's Soil and Water Conservation Board has been designated by the Governor to receive.

e. Texas State Department of Health

(1) Administrative Organization

The State Board of Health consists of nine members, appointed by the governor and confirmed by the Senate for overlapping terms of six years. Six of these members must be licensed physicians, who must have at least five years of medical practice; one member is required to be a similarly qualified dentist, and one a pharmacist, while the ninth member be a graduate civil engineer with a minumum of five years experience and a specialist in sanitary engineering.

The State Commissioner of Health, formerly called the State Health Officer, is appointed by the State Board of Health and serves as the executive head of the Department of Health. He is subject to the general supervision of the board members, and may be removed by them.

The Commissioner of Health is charged with the supervision and coordination of the departmental activities. Under his direction, operating diversions of the department perform varied functions. The divisions most directly concerned

with matters pertaining to water are the sanitary engineering and the water pollution divisions.

(2) Functions

The activities of these divisions are multiple and varied, and have evolved as a result of the need for assistance by communities in improving environmental conditions in urban and rural areas. Their functions are confined largely to the creation and maintenance of a favorable environment designed to reduce the incidence of preventable diseases.

The Texas State Department of Health is the official governmental agency created to prevent and control disease and to promote good health. Minimizing health hazards associated with water is, for this reason, of major concern to the department.

(a) Protection of Local Water Supply and Supervision of Municipal Sewage Disposal

The protection of the purity of the public water supply is one of the major tasks of the Department of Health. Its Bureau of Sanitary Engineering is charged with the making of studies and investigations, the collection of evidence in connection with the enforcement of laws pertaining to the provision of safe water for the public, the pollution of streams, and various other items of general sanitation.

The State Department of Health must approve the establishment of all water supply or sewage disposal systems. In undertaking this responsibility, the Department makes available to the local units of government and to many State agencies consulting services on public health engineering.

The Bureau of Sanitary Engineering also undertakes an educational program to train operators of municipal water and sewage plants. A vocational in-service training program has been worked with other institutions and with

professional organizations to undertake such training. Certificates of competence are issued by the Department to individuals in charge of the production, treatment, and distribution of public water supplies and to those in charge of the operation of sewage treatment plants.

(b) Collaboration with U.S. Public Health Service

The Department collaborates with the U.S. Public Health Service in the certification of water supplies used in interstate traffic, the certification of oysters produced in Texas, and other similar programs to control the spread of contagious diseases.

f. Texas Parks and Wildlife Department

(1) Administrative Organization

The Parks and Wildlife Department is governed by a three member board, appointed by the Governor with the consent of the Senate for overlapping terms of six years.

The Department appoints an executive director and delegates to him such executive duties as are deemed appropriate. The executive director is subject to the general supervision of the board, and may be removed by them.

The executive director performs all the duties prescribed by the board and has authority to appoint division heads, game and fish wardens, and other necessary employees. Under his direction, the seven operating divisions perform their functions.

(2) Functions

The Parks and Wildlife Department was established for the purpose of protecting, perpetuating, and improving the recreational and wildlife resources of Texas. In fulfilling this responsibility, the commission is charged with the enforcement of the pollution laws insofar as they relate to the protection

of fish and other edible animals. The Board is also concerned with the acquisition, development, maintenance, and operation of parks. It develops and maintains recreational facilities on lands adjoining several lakes and streams of the State.

(a) Resource Development Planning

The Department is responsible for developing recreational potentials of the state's water resources and the lands adjoining these waters. In this function the Department cooperates with the various state and federal water agencies, as well as with other agencies. The Department has requested assignment of recreational areas on reservoirs now being constructed, or to be constructed, by the U.S. Army Corps of Engineers and the U.S. Bureau of Reclamation.

(b) Pollution Abatement Activities

In undertaking their responsibilities for enforcement, game and fish wardens regularly patrol the entire State. In the course of these routine patrols, the wardens often find evidence of pollution. Technicians of other divisions engaged in making surveys of streams, lakes, and bays report any evidence of pollution.

In abating pollution activities, the agency cooperates with a number of other State agencies, including the Department of Health, the Railroad Commission, the Water Rights Commission, the Water Development Board, and the Attorney General's office, as well as with a number of federal agencies. The executive director of the Parks and Wildlife Department is a member of the Water Quality Board.

g. Railroad Commission of Texas

(1) Administrative Organization

The Railroad Commission, established in 1891, has three commissioners who are elected and who hold office for six years. The commissioners serve on a full-time basis, and collectively constitute an administrative directorate for the work performed through five operating divisions.

(2) Functions

The Railroad Commission, the State's principal regulatory agency for public utilities, has jurisdiction over the oil and gas industry. A related responsibility of the Commission is the prevention of pollution of surface and ground waters from crude petroleum oil, salt water, or other mineralized waters which may escape from oil and gas wells.

The Oil and Gas Division is charged with supervising the enforcement of laws and Commission rules that govern the conservation and prevention of physical waste in the production of oil and gas. The Division has the responsibility for inspecting each well for equipment, safety, protection against water intrusion, and similar matters.

(a) Regulation of Disposal of Oil-Field Wastes

The salt water (brine) brought to the surface in oil and gas drilling and recovery operations is highly concentrated, and requires a large amount of fresh water to dilute it. Since water in such quantities is not available in Texas streams, the problem is one of completely disposing of the brine and preventing its reaching fresh-water sources--both surface streams and ground-water strata. The most satisfactory means of disposing of oil-field brine yet discovered is its injection into deep porous underground strata separate from fresh-water strata, with a layer of impervious material between.

Since 1955, the Railroad Commission has had legislative authorization to make and enforce regulations to protect the surface and underground waters from the escape of oil-field waste and brine. The commission has made such regulations and rules, and has worked with the oil and gas industry in an effort to solve the problems. The Act of 1955 also provided that the commission may require a bond to ensure that all wells drilled will be plugged in accordance with rules and regulations when the wells are abandoned.

The Chairman of the Railroad Commission is a member of the Texas Water Quality Board.

h. Texas Water Quality Board

(1) Administrative Organization

This seven member board is composed of the State Commissioner of Health, the Executive Director of the State Parks and Wildlife Department, the Executive Director of the Texas Water Development Board, the Chairman of the Railroad Commission of Texas, and three members appointed by the Governor for six-year terms.

(2) Functions

The Legislature created the Texas Water Quality Board to provide better protection of the waters of the State from pollution. The board is authorized to establish water quality criteria for all streams and to issue permits for the discharge of waste into or adjacent to the waters of the State. The Board is instructed to consult, advise, and cooperate with other agencies, affected groups, and industries in its program of prevention, abatement, and control of pollution, and conduct studies and collect and disseminate information relating to water pollution and its control and prevention. The Board will prepare a comprehensive plan for the control of pollution and administer the

federal-state grant-in-aid program for the construction of local waste-treatment facilities, pursuant to the Federal Water Pollution Control Act. Construction plans for a proposed sewage treatment facility are required to be filed with the Board prior to construction.

Under the Texas Water Quality Act of 1967, specific functions in support of the activities and programs of the Board are assigned to the Texas State Department of Health, the Railroad Commission of Texas, the Texas Parks and Wildlife Department, and the Texas Water Development Board. A local government, as defined in the Act, is empowered to implement and enforce Board policies and directives within its jurisdiction. There are other governmental agencies acting under other statutes which have specific pollution control responsibilities for certain activities under their jurisdiction. Section 11 (i) (3) of the Act directs the Board to "establish policies and procedures for the purpose of securing close cooperation in the work of the agencies of the state with respect to water quality control functions carried on by such agencies." Implicit in this duty is the responsibility of the Board to be informed on all aspects of water quality and the control and abatement of pollution; to assist in resolving questions as to the respective authority and duties of governmental agencies vested with water quality control functions; and to strive for coordination of effort among such agencies, to the end that the public can be authoritatively advised on water quality matters, duplication of activities can be minimized, and the State policy for water quality control can be effectuated. Policies and procedures for cooperation in the water quality control effort are established only after notice to and opportunity for affected agencies to make recommendations to the Board. For additional analysis of agency functions in the area of water quality control, see discussion of: "Regulation," "Water Quality" (page 85).

### 3. Coordination of State Agencies in Water Resources Development (The Planning Agencies Council for Texas--PACT)

Principally because the reorganization of water-related agencies is of such recent vintage, there are gray areas of shared responsibility and interlocking authority. The Planning Agencies Council of Texas (PACT) was established within the Governor's office by legislative resolution to coordinate plans of the various State agencies. Members of PACT include:

Air Control Board

Coordinating Board, Texas College and University System

Texas Education Agency

Texas Employment Commission

Texas State Department of Health

Texas Industrial Commission

Texas Department of Mental Health and Mental Retardation

Texas Parks and Wildlife Department

Railroad Commission of Texas

Soil and Water Conservation Board

Texas Water Development Board

Water Quality Board

Water Rights Commission

Department of Public Welfare

Texas Highway Department

### 4. Cooperative Efforts by State and Federal Agencies

The activities of the federal government in the varied facets of water planning and development in Texas are conducted as they are in other states, through a diverse hierarchy of federal agencies and bureaus. Responsibility for major water-supply projects in Texas is divided between the U.S. Army Corps of Engineers and the U.S. Bureau of Reclamation generally along the 100th

meridian which splits the State into equal parts. Use of the full federal capability--financial, technical, and construction--has been implicit in Texas planning, provided of course that conflicting aims and views of the various entities can be resolved. In the Planning Agencies Council for Texas (PACT), Texas will provide federal agencies with a focal point for dealing with the State on matters which cross State agencies' lines of responsibilities, and a forum through which one voice can speak for the State government on specific problems.

## C. WATERSHED DISTRICTS AND PROGRAMS (CONSERVATION AND RECLAMATION DISTRICTS, AND RIVER AUTHORITIES)

Texas differs somewhat from her sister states in water resource development in that many of her rivers are purely intrastate streams. Eight of the major Texas rivers run from their sources in West Texas to the Gulf. This has made possible the creation within the State of a basinwide type of district, which is called either a conservation and reclamation district or a river authority. As originally conceived, these "conservation districts" were an attempt to create a governmental unit which would have an overall basinwide perspective, as well as the authority fully to develop and conserve the water and oil resources of the basin.

This recognition of the natural unity between land and water resources and the need for a governmental agency capable of planning and coordinating such programs in the entire watershed arose concomitantly with the development of the idea of regionalism. The literature in this field, as well as the creation of the Tennessee Valley Authority by the federal government, indicates that in the late 1920's regionalism was thought to be the solution of many governmental problems. This feeling extended into the early 1930's, and Texas' experimentation with this new concept was initiated in part because of the conditions attendant upon the depression. The economic conditions of unemployment, delinquent taxes, and the financial distress of many water districts, plus the disastrous floods of this period, stimulated the growth of a basinwide district as a means of acquiring possible federal grants and loans.

In 1929, the State created its first conservation and reclamation district, the Brazos River Conservation and Reclamation District, since renamed the Brazos River Authority. This was a pioneering move, for here was the first authority ever set up to administer the waters of a major river.

### 1. Powers

River authorities are created as governmental agencies, bodies politic and corporate, and vested with all the authority as such under the Constitution and the laws of the State. They have the power of such water districts as are authorized in the provisions of the Conservation Amendment in the Constitution. They may formulate plans for the control, storing, and preservation of storm and flood waters of the river and its tributaries, and they have the power to provide and maintain improvements for the common benefit of the district. They are, furthermore, usually given specifically broad powers to do a number of things.

### 2. Finances

Most of these river authorities are not given the power to tax. To obtain funds necessary for carrying out its planning activities, the authority is to rely upon the counties it encompasses to contribute funds.

The river authorities are also empowered to receive loans and grants from the federal government. In fact, some of the acts specifically state that the conservation district will ask federal aid.

River authorities may issue bonds secured by the revenue to be derived from the sale of water or electrical power. The revenues from such sales are used to pay the operating expenses and to amortize bond issues for these purposes. Often there is no limit placed upon such issues of revenue bonds, but in other instances a maximum is placed upon the amount of revenue bonds which may be issued without a special act of the Legislature.

Because of larger jurisdiction, most river authorities are in a better position to finance, construct, and operate dams and reservoirs on the main stem of a river or on a large tributary than is a city or a local water district. Certainly, if the proposed dam is to be constructed across a major Texas stream,

the project can best be financed by a river authority. Furthermore, the authority may cooperate with local interests which may contract to purchase water and power from such projects.

### 3. Functional and Legal Status

The Texas river authority is, to a degree, a middle unit of government--lying between the State and local levels. It resembles in many aspects, and is treated in some ways in the statutes creating it, as a State agency. The Texas Supreme Court has upheld this classification. Indicative of this status, too, is the fact that the directors are elected for a six-year term, whereas local officials can be elected for only a two- or four-year term. Often these directors are appointed by the same method as many other State officials--by the Governor, with the consent of the Senate. The books and accounts of the river authorities are audited, as are other State agencies' books and accounts, by the State Auditor.

On the other hand, the authority resembles a local unit of government. Its jurisdiction is often over a small area; it is subject to the supervision of the Texas Water Rights Commission, and in some instances to the Texas Water Development Board, which has been delegated the duties that the State Reclamation Engineer formerly held.

## D. LOCAL ADMINISTRATIVE AGENCIES AND PROGRAMS

Several units of local government in Texas are authorized to engage in various water programs. Counties, cities, and the various kinds of water districts are all authorized by statute to undertake certain projects.

### 1. Counties

Texas counties perform a dual governmental role. They carry out a number of direct service functions for their people, and they also serve as agents in carrying out the state law. In both roles counties are responsible for various phases of water programs.

#### a. Water Resources Functions

Early in the State's development, counties were relied upon to undertake certain water-related functions. They were authorized to clear and improve streams for navigation and to make drainage and flood control improvements on petition of specified numbers of property owners. These programs, however, were limited, as constitutional limitations permitted only a special assessment tax to finance these improvements. The county remained the only unit of local government authorized to perform these services until 1904, when the Constitution was amended to permit the establishment of special districts. Since that time, these new units have assumed most of the duties of making such improvements.

#### b. Taxing Authority

Since the withdrawal of the State from the ad valorum tax field in 1951, counties have been authorized to increase their taxes and to spend the additional funds for flood control purposes. Those counties having taxable values of $290 million or more on the tax rolls may spend up to $15,000 a year for the purpose of making a preliminary engineering survey relating to drainage, reclamation, and conservation, as well as levee improvement or flood control. And all

counties may expend road funds for the purpose of constructing ditches for drainage along the roads.

Those counties which have been relieved of the payment of State taxes because of "great public calamity" are given special broad powers to construct and maintain pools, lakes, reservoirs, dams, canals, and waterways for flood control, drainage, and irrigation purposes. They may issue bonds not to exceed one-fourth of the assessed valuation of the real property within the county to undertake these projects. Most of these counties are in the coastal region.

c. Cooperative Programs with Federal Government

Texas counties have authority to cooperate with the federal government in navigation projects. They may issue bonds up to one-fourth of the assessed value of the real estate in each county to purchase land and rights-of-way for such projects, and they have the power of eminent domain to aid in carrying out this authority. They may convey these lands without cost to the United States, if necessary, to aid in navigation projects undertaken by the federal government. Coastal counties are specially authorized to provide the right-of-way and easements necessary for the intracoastal canal.

Similar cooperation in flood control programs is authorized. Counties may agree to indemnify the United States on account of damages or claims arising out of or connected with the construction of such flood works and may transfer without monetary consideration the county land and rights in land needed for such flood control works.

d. Contracting Authority

Texas counties have the authority to contract with any city or town, and may acquire water systems and water supply reservoirs for the purpose of supplying water. Those counties authorized to acquire a water supply from subterranean waters may sell, contract to sell, and deliver any or all of such

water to any public or municipal corporation.

e. Administrative Agency of State Government

In addition to the authority to participate directly in water programs, counties act as administrative agencies of the state government. They are responsible for enforcing the state laws, including fish and game laws, and water laws pertaining to water districts.

f. Creation and Supervision of Local Water Districts

Under the general water law statutes, the commissioners' court of a county is empowered to create all types of water districts which are located entirely within the county. Some types of districts, (for example, levee, drainage, water control and preservation, and navigation) which include land in several counties are also organized by a single county board or commissioners court. The county commissioners court appoints the governing board of levee, drainage, and navigation districts, and the boards of water control and preservation districts situated in only one county. If there are not enough residents to constitute a governing body for a fresh water supply district, the commissioners court may appoint a three-man governing board.

Ostensibly, counties also have a certain amount of supervisory authority over general law districts. The county auditor, in a county having an auditor, has general oversight of all the books and records of all the county officers, as well as those of the district or state, who are authorized to receive or collect money. Districts are required to file with the county auditor a copy of the requisition for all purchases of supplies and materials and, in some instances, the county auditor is required to prescribe the accounting system for the districts in the county. There are, however, many exceptions to these general rules. Population-bracket bills often exclude specific counties from these provisions, and most of the district-enabling legislation provides

specifically that the district directors shall employ a competent, private auditor to audit the district's accounts. It is provided, however, that any commissioners court shall have the authority to employ a disinterested, competent, and expert public accountant to audit all or any part of the books, records, or accounts of any district officer when, in its judgement, an imperative public necessity exists.

Thus far Texas counties have not been too active in undertaking responsibilities in the area of water resource administration and development. Some of this inactivity may stem from limitations upon the taxing power, while part may arise from the fact that other units of government (special districts), better suited to perform these funtions, have preempted most of this field.

## 2. Cities

### a. Construction and Administration of Local Water Supply and Waste Disposal

Unlike counties, cities exist primarily to regulate and administer the local or internal affairs of their incorporated territories. For this reason, they have a vital concern in maintaining an adequate municipal water supply. Texas cities may construct municipal water supply systems and issue the bonds required to construct them if such construction and bonding are approved in popular elections. They also have authority to contract with private water companies or with water districts to supply municipal water.

Municipal water-supply systems are used not only to provide water for urban domestic use, but also for such city services as fire protection, street sprinkling, swimming pools, and parks. In addition, many industries and commercial establishments draw on the municipal water supply.

Another service cities are required to undertake is that of waste disposal. Texas cities are authorized to construct sewer systems and sewage disposal plants. Most of these plants must be financed with bond issues, which are

subject to the voters' approval and to the statutory and constitutional limitations regarding indebtedness. If the city council desires, it may levy sewage service charges to help meet the expense of this service. Another source of revenue for construction of municipal sewage treatment plants is the federal aid available to some cities under the Federal Water Pollution Control Act.

b. Construction and Administration of Flood Control Measures

Flood protection measures are also undertaken by cities, as many cities are located on or near streams subject to overflow. Home rule cities have the power to straighten, widen, or in other ways improve, any river or stream within the city and to levy a special assessment on the property owners specially benefited. They may also establish improvement districts to undertake these functions, and these districts may issue bonds for making such improvements. All Texas cities may cooperate with the federal government in undertaking flood control measures. They may acquire lands, easements, and rights-of-way and may deed these without monetary consideration to the United States to aid in the flood control program authorized by Congress. Furthermore, cities may borrow or accept grants from the federal government to undertake such improvements.

c. Construction and Administration of Navigation Improvements

Texas cities located on navigable streams may acquire land for the purpose of establishing and maintaining wharves, docks, railway terminals, or any other aid to navigation. They may also deed this property to the federal government for the improvement of navigation. Any city situated within the territorial limits of a navigation district and having a deep water port may purchase, construct, own, and maintain dikes, spillways, seawalls, and breakwaters to protect the city. Further, they may elevate and reclaim submerged or low lands along the waterfront, dredge channels, and build and operate drydocks, piers,

wharves, and boat basins. To finance these improvements to their harbors, coastal cities may issue bonds.

d. Construction and Administration of Hydroelectric Plants and Power

Texas cities may generate, purchase, and distribute hydroelectric power. They may own and operate municipal electrical plants and may contract with other generating agencies for electrical energy. Numerous Texas cities now purchase part or all of their electricity from agencies generating hydroelectric power, such as the Lower Colorado River Authority and the Brazos River Transmission Electrical Co-Operative.

## 3. Water Districts

### a. Functions and Types of Water Districts

Since the 1904 constitutional amendment permitting the creation of special districts, water districts have become the most important unit of local government undertaking water programs in the State. The local water districts, together with the federal agencies, are the action agencies which construct, operate, and maintain most waterworks and water projects.

Water districts in Texas undertake all of the major types of water programs, including flood control, drainage, navigation, sewage disposal, power supply, ground-water control, mosquito control, soil conservation, and recreation, as well as irrigation, domestic, commercial, and industrial water supply. These tasks of supplying and controlling water often involve the construction of levees, dams, lakes, and power facilities, or the channelling, clearing, and maintenance of streams and rivers. Water districts in Texas do all of these things, and more.

Water districts may be created under general or special laws, and both classifications are commonly found in Texas. The legislature often creates districts by special legislation, even though the general laws grant broad powers to districts.

There are thirteen types of general law water or water-related districts. A list of the type of districts which may be created under the general law is shown in Table I.

Table 1.--Types of general law water districts in Texas

| | |
|---|---|
| Water Control and Improvement | Municipal Water |
| Water Improvement | Irrigation |
| Water Control and Preservation | Levee Improvement |
| Water Power Control | Drainage |
| Water Supply | Navigation |
| Fresh Water Supply | Conservation and Reclamation |
| Underground Water Conservation | |

As can be seen, the mission of the district is generally indicated by the prefix to the title, "Irrigation Districts," "Water Control and Improvement Districts," "Drainage Districts," etc. The statutes describing and authorizing water districts fill two volumes of the state code, running from Article 7466 to Article 8280 and covering more than 2500 pages. The length and complexity of these laws are due, in part, to the fact that, since the passage of the first conservation amendment in 1904, new water district legislation has simply been tacked on to the old.

In addition to general law districts, there are over 400 special water districts which were created directly by the legislature. These bear various names, but the official names given them are notoriously unreliable as indicators of the activities performed by the districts. A large number of these are similar in form, and perform the same functions as districts organized under the enabling acts. Some are basinwide in scope, and are vested with broad powers to accomplish multiple-purpose development of the waters of the entire watershed. (See "Watershed Districts and Programs," Page 47.) Others perform one or two specific tasks, much as multicity districts--a type of

district which has become very popular in Texas since World War II--which provides water supply or sewer facilities for the member cities. There are, in addition to these types, several other special act water districts.

b. Creation of Water Districts

The method provided for the creation of the general law districts is found in the enabling legislation. Most of these enabling statutes for surface water districts provide four steps in the procedure for establishing a district. They are: (1) a petition for the establishment of a district by a certain number of taxpaying residents, (2) a hearing before the county commissioners court or other authorizing agency, (3) approval of the action by a popular election, and (4) the appointment or election of the directors of the district.

Surface water districts (other than municipally created districts) within one county may be established by the county board. The agency authorized to create bicounty districts, however, varies from one statute to another. For instance, levee improvement districts, if located in two or more counties, may be created by the county board selected by the district to have authority over it, while for a similar navigation district, the county in which most of the land is situated receives the petition. The Texas Water Rights Commission receives the petition for the establishment of bicounty water improvement districts and water control and improvement districts.

The procedure for establishing an underground water district is somewhat more complex. The Ground-Water Conservation Districts Act (Art. 7880-3c) provides for the conservation and preservation of underground water reservoirs or subdivisions thereof. The organization of such district involves two distinct procedures: (1) the designation of an underground reservoir or subdivision thereof, and (2) the creation proceeding. The Texas Water Rights Commission must first, either at its own instance or upon a landowner's

petition, designate an undergound water reservoir or subdivision thereof. After such a designation by the Commission, a ground-water district, coterminous with its boundaries, may be formed according to the procedure laid down in the Water Control and Improvement District statute.

As has been noted, not all types of water districts found in the State may be created under existing statutes. For example, neither a local government nor the Texas Water Rights Commission is authorized to organize river authorities, valley improvement districts, or water recreation districts. These and others, with names such as watershed districts and authorities, flood and irrigation districts, navigation and port districts, sanitation authorities, water and soil conservation districts, water and sewer improvement districts and authorities, municipal and industrial authorities, and so on, may be created only by the Legislature.

c. Number of Districts

The total number of water districts in Texas is very difficult to determine. One reason for this is that various types of general law districts may be created by a number of different agencies: counties, cities, and the Texas Water Rights Commission. Further, there are the special law districts. Some of these require an election of confirmation in the localities involved, and in some instances the proposition fails to receive an affirmative vote. Unfortunately, special act districts voted down in confirmation elections are retained in the statutes and are likely to be included in any census of districts.

Until the Legislature enacted a statute requiring a copy of the order or act creating a district to be filed with the Texas Water Rights Commission (1955), there was no way of knowing the total number of water districts without a county-by-county and city-by-city census. Even with this requirement, it is

difficult to ascertain the total figure, because many districts are either dormant or have been abolished or annexed by municipalities. Furthermore, there has not been complete compliance with this registration requirement.

d. Powers

Special districts in Texas have been granted sweeping powers by the Legislature in matters relating to water. For example, the most common type of water district, the Water Control and Improvement District, may provide water for irrigation as well as for domestic, commercial, and industrial uses. It also may improve rivers for navigation, and undertake drainage programs, as well as build dams, reservoirs, and lakes; and it may operate sanitary sewer systems, collect refuse, and so on. Such a district may even be formed to determine the feasibility of forming a district. Other types of districts, especially those authorized by earlier legislation, have more limited authority.

The powers and functions of an underground water district include: (1) making and enforcing regulations for the conservation and recharging of underground reservoirs; (2) making and enforcing rules against waste; (3) issuing permits for the drilling of wells within the reservoir; (4) requiring reports on the drilling, equipping, and completion of wells; (5) acquiring lands for the purpose of recharging operations; (7) making surveys and plans and carrying on research relative to ground water; and (8) enforcing by injunction or other appropriate process the duly adopted regulations of the district.

The wide variety of water districts created by special acts and their lack of uniformity make it difficult to generalize about their powers. Many of the districts created by the Legislature are similar in form and perform the same functions as districts created under the general statutes. If one excludes the river authorities, districts dealing primarily with soil erosion, and several other types such as sanitation and water recreation districts, then

most of the districts are very similar to, and function in the same way as, water control and improvement districts.

Water districts are units of government, and have the usual corporate powers--the power of eminent domain, the power to levy taxes and special assessments, and the power to issue bonds, subject to limitations appearing in the enabling laws. In fulfilling their missions, districts are authorized to make necessary surveys, examinations, investigations, and plans; to purchase or construct, and maintain, water works and facilities; and to cooperate and contract with federal agencies, individuals, private corporations, other districts, river authorities, and other municipalities.

e. Administrative Organization

Water districts are governed by boards of directors of various sizes and kinds. Those formed under the general laws are governed by boards composed of from three to five directors each. In levee improvement, drainage, and water control and preservation districts, the directors are appointed by the county board. But in water improvement, water control and improvement, fresh water, and underground water districts, the directors are elected by the real property owners who are qualified voters of the district. Some districts may be divided for electoral purposes into divisions or precincts. For example, the directors of a water improvement district may divide the district into equal sections and provide that the directors shall be elected from these sections. And the "precinct method" of electing directors is required for underground water districts.

The qualifications required for directors are simple. They must be owners of real property in the district, over 21 years of age, residents of the state and district, and eligible to vote. They are not required to have particular professional qualifications.

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Board directors for districts created under special acts are also selected in various and unique ways. In fact, one of the reasons often given for creating a district by a special act of the Legislature is to provide representation on the Board for constituent elements, such as in multiple-city districts. The most prevalent methods of selecting these directors are by appointment by the Governor, another state official, or members of the constituent units. The size of the governing bodies ranges from 3 to 21 members.

f. Control and Supervision of Districts

There is little control or supervision of water districts by either state agencies or the public. In fact, the general criticism that the public is unable to exert adequate control over special districts applies with equal validity in Texas. The rapid multiplication of disparate, often overlapping, water districts of all kinds and sizes makes it impossible for even the most conscientious citizen to understand their problems and activities, much less watch and regulate them.

Equally true is the criticism that there is a lack of control, supervision, and coordination by the State. The criticism stems from the fact that the only legal restrictions usually pertain solely to financial powers and the engineering soundness of proposed projects. This, in turn, results in uncoordinated, splintered efforts among these governmental entities, which can sometimes lead to an irrational competition for public monies without intelligent weighing of the relative merits of competing demands.

The entire program of supervision of water districts by state agencies consists of the following: water improvement and water control and improvement districts which issue bonds must submit their proposed engineering plans to the Texas Water Rights Commission for an investigation as to the engineering feasibility of the proposed project. The bond issue to finance such a project must

next be examined as to its legality by the Attorney General. Bond issues proposed by all general law and most special act water districts must be submitted to the Attorney General. The only factors considered by these agencies are the technical engineering and legal aspects, and after the plans and bonds are approved, there is no supervision of the actual construction to ensure that it is in accordance with the approved plan. Nor is there any supervision of the sale of the bonds. Levee districts are required to submit their plans for the approval of the Commissioner of the General Land Office. This, too, is an examination only as to the engineering soundness of the district's plans. Water rights of all districts diverting water from rivers and streams are subject to the same control by the Texas Water Rights Commission as the Commission exercises over all others.

There are also few statutory limits and controls upon the financial powers of most districts. The majority of districts operating under enabling acts enacted since the 1917 Conservation Amendment are free from state-imposed limitations. The only requirement in most cases is that the bonded indebtedness be incurred only after approval by a majority of the property taxpaying voters of the district voting at any single election. No tax or debt limitations were placed upon most districts organized under these statutes.

This results in a contrasting situation wherein the State, the counties, and home rule and general law cities are subject to constitutional or statutory debt and tax restrictions, while water districts, generally, are not. This, of course, is one explanation for the rapid growth of water districts.

### 4. Soil and Water Conservation Districts

Soil conservation intimately affects the conservation of water resources. The rate of runoff, the amount of silt from erosion, and the infiltration of water to recharge ground-water reservoirs can be influenced by soil conservation, and are crucial to a water conservation and development program. This is well

stated in the Texas statute called the State Soil Conservation Act, which states:

> "That the consequences of such soil erosion in the form of soilblowing and soilwashing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon,... a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall runoff, causing severe and increasing floods, which bring suffering, disease, and death;... and losses in navigation, hydroelectric power, municipal water supply, irrigation development, farming, and grazing."

In 1939, the Texas Legislature passed this soil conservation law, which authorized the establishment of districts for the purpose of conserving the soil resources of the State. Impetus for the state law came from the national Soil Conservation Act of 1935, under which technical assistance was made available to farmers, provided they were organized into districts, in applying soil conservation measures.

By February 1968, there had been organized in Texas 184 soil and water conservation districts; these covered more than 98 percent of the land in the State. Each district is governed by an elected five-member board of supervisors and is an independent subdivision of the State. Among other things, the districts are authorized to: (1) carry out preventive and control measures within the district; (2) conduct surveys and investigations of flood damage, soil erosion, and control measures needed; (3) conduct demonstration projects; (4) furnish agricultural and engineering machinery and equipment, fertilizer, seeds, and such other material or equipment, as will assist farmers and ranchers in carrying on erosion control, flood prevention, and water management operations; and (5) cooperate or enter into agreements with any agency, governmental or

otherwise, or any occupier of lands within the district in the carrying on of erosion control and prevention operations within the district.

Soil and water conservation districts in Texas have no taxing or bonding powers. Financing of the soil and water conservation practices undertaken within the district is met, for the most part, by the individual farmers and ranchers. They may be assisted in the planning and construction stages by technicians from the U.S. Soil Conservation Service, and they sometimes receive materials from the federal agency. Furthermore, financial assistance is available to the individual farmers under other programs of the U.S. Department of Agriculture.

The soil and water conservation districts exist to aid the planning of activities within the district and to channel requests for technical assistance to the U.S. Soil Conservation Service. The State Soil and Water Conservation Board (discussed on page 37) functions largely as a clearinghouse of information for the 184 districts, and coordinates their programs through advice and consultation.

## E. INTERSTATE COMPACT COMMISSIONS

The interstate character of several of the rivers in Texas has necessitated compacts with other states to allocate these waters and to plan for the development of the river basins. Texas is now a party to four interstate compacts: the Rio Grande Compact between Texas, Colorado, and New Mexico*; the Canadian River Compact between Texas, Oklahoma, and New Mexico; the Pecos River Compact between Texas and New Mexico; and the Sabine River Compact between Texas and Louisiana.

### 1. Administrative Organization

The administration of these compact commissions is entrusted to multimember boards. The Rio Grande, Pecos, and Canadian Commissions consist of one representative from each participating state and, since national interests are involved, a representative of the federal government as well. In each case, the federal representative is designated chairman. The Sabine River Compact Administration is composed of two members from each of the participating states and one from the federal government, the latter serving as chairman. All commissions require that any salary and all expenses for each representative be borne by the government he represents.

### 2. Functions

The principal purpose of these commissions is to determine whether or not the states are meeting their obligations under the terms of the compact for the delivery of water into the river. Several of these compacts provide not only for the preservation and equitable apportionment of the waters of the river but also for the development of the water resources in the basin. The primary

*Waters of the Rio Grande are allocated also by international treaty and administered by the International Boundary and Water Commission--United States and Mexico.

concern, however, of all four water compacts now in operation is that of apportionment. None of them has moved very far in the direction of water resource development. The Pecos River Compact Commission contracts with the U.S.G.S. to gather data. The Texas Commission also employs a consultant to correlate and evaluate the records.

## F. GOVERNMENTAL TRENDS IN WATER RESOURCES DEVELOPMENT

Until 1964, local units of government operating with the federal government bore the brunt of the State's responsibility to develop and conserve Texas' water resources, as declared in Article XVI, Section 59, of the State Constitution. They undertook and financed the programs to build dams and reservoirs, to improve the harbors, to operate and maintain these facilities, and to do the numerous other things required in these programs.

As the population and industrialization of the State have grown, the increased water problems have made necessary the creation of new water agencies and the adjustment of the size of local units to better fulfill their functions. Much of the responsibility for water development shifted from the county to water districts, and then from single-purpose water districts to multiple-purpose river authorities. Parallel to this development has been the trend in cities toward water districts, and toward multicity districts to undertake projects which a city alone could not develop.

These changes were accomplished in a patchwork manner. Newly created units were often given tasks, responsibilities, and authority already possessed by older units. As a result, numerous local agencies have overlapping authority and responsibility, and in many instances there has been little coordination between them. At the beginning of the present accelerated planning program in Texas, there were more than 600 river authorities, water districts, and other local or regional political entities with direct responsibility for some aspect of water development. As in the case of state and federal agencies, the need for effective administrative planning and coordination increased as the population of the State increased and the demands for water continued to grow.

Beginning in 1964, under the direction of Governor Connally, the State of Texas as a whole become the focal point for the development and management of water resources in Texas. Whereas responsibility for water management began with cities, followed by water districts, and multicity districts and river authorities, the recent trend in water management in Texas has been toward greater centralization of responsibility in statewide agencies. This trend has not been dictated by a new theory of water management but has been necessitated by the increasing complexity and size of water problems and the increasing difficulty of local units of governments to deal effectively with them.

THE TEXAS WATER DEVELOPMENT BOARD

Its Organization

Its Functions

October 1967

The purpose of this report is to briefly describe the laws under which the State of Texas functions with respect to the development and management of its water resources. One of the major organizations to be assigned functions and responsibilities in this area is the Water Development Board. For the sake of simplicity and clarity, activities of the Water Development Board have been condensed into the following twelve pages. Should more detail be desired on any point herein outlined, the subject can be expanded in depth upon request.

Urged by Governor John Connally, the Legislature realigned functions previously performed by the Texas Water Commission. Investigation, planning and developmental functions of the Commission were transferred to the Texas Water Development Board and combined with the Board's financial responsibilities.

Designated by the Legislature as the State agency to cooperate with the Corps of Engineers and the Bureau of Reclamation in planning water resource development projects within Texas, the Texas Water Development Board moved quickly to its newly assigned duties. Meeting these new directives required the Board to define its objectives for water resource study, planning, and development in terms which interpreted the obligations placed upon it:

1. To prepare a state wide plan for the development of the water resources of Texas which will provide a flexible guide for the physical development of

these resources; the operation of physical works; and the distribution and utilization of available supplies in the best interests of all the State.

2. To integrate the Board's concept of water resource study, planning, and development into the planning and developmental activities of other State agencies, in order that the plans for Texas' future development will comprise an integrated whole providing the optimum use of all the State's natural and cultural resources.

3. To maintain, and to more clearly define, the sound administration of the Texas Water Development Fund, in order that these State monies will be used selectively to achieve the maximum return to the State and its people.

4. To establish a base of understanding and acceptance of mutual responsibility between the Development Board and State, local and Federal agencies involved in water resource investigation, planning, and development so that the full obligation for exercise of these functions shall be shared equitably.

5. To establish where needed, and to continue where in operation, long-range programs of water resource study, data collection, investigation, and research with appropriate agencies and educational institutions so the State, local units of government, and Federal agencies can plan water development on a rational basis with full knowledge of the implications and effects of proposals for development on water availability, quality, and use.

6. To analyze the problems and needs for Texas for full water resource utilization so that required legal and institutional rearrangements to assure the best use of these water resources can be prepared and recommended for legislative consideration.

Legislative realignment of the functions of the water agencies of Texas described the responsibilities of the Texas Water Development Board as follows:

1. To prepare a comprehensive Texas Water Plan

2. To act as the State cooperator in water development planning with the Bureau of Reclamation and the Corps of Engineers

3. To act as the State sponsor of Federal projects where no suitable local agency or agencies can undertake the task

4. To make loans to local governmental agencies for approved water projects consistent with overall planning objectives

5. To negotiate with the Federal government for inclusion of water storage space in Federal projects

6. To purchase storage space in local or Federal reservoirs to insure optimum development of the reservoir sites

7. To construct reservoirs and distribution facilities as required to move water from the reservoirs to the cities, districts, or other wholesale customers

8. To collect basic data on the occurrence, quantity, and quality of the surface and ground water resources of the State; carry on the program for topographic and geologic mapping of the State, and to determine statewide water requirements as to quantity and quality.

AGENCY DIRECTION AND ORGANIZATION

The Texas Water Development Board is headed by a six-man, non-paid Board, meeting monthly--or upon call by the Chairman--to carry out its duties.

The programs of the Board are directed by the Executive Director, selected by the Board, and assigned responsibility to act through and for the Board in carrying out its duties.

The technical funtions of the Board are directed by the Chief Engineer, responsible to the Executive Director, and assisted by the Planning, Program Development, and Coordination Unit which includes the Program Controller, two Assistant Chief Engineers, and specialists in various fields of water development.

The General Counsel to the Board provides the Executive Director and the Board legal advice on questions which arise, prepares contracts with agencies, political entities, and consultants with whom the Board's business is involved, and, with the staff of the Attorney General's office, provides generally the legal services required in carrying out the Board's duties.

The Development Fund Manager, responsible to the Executive Director, and to the Board, administers Texas Water Development Funds in accordance with the Board's directives and statutory requirements.

Directed through the Chief Engineer and the Planning, Program Development, and Coordination Unit, the technical divisions of the Board--Ground Water, Basic Hydrologic Data, Reports, Electronic Data Processing, Economics and Water Requirements, Planning Hydrology and Special Studies, and Project Planning and Review--carry out the complex assignments related to the Board's activities.

The Assistant Chief Engineers work directly with the technical divisions of the Board in program implementation and supervision; the Program Controller is responsible for maintaining a continuing system of coordination of the activities of the technical divisions to assure there is no duplication of effort and that the programs under way are meeting both schedules and objectives; the Water Quality Specialist and the Agricultural Specialist have direct responsibilities for programs related to their individual specialities as well as for working with the technical divisions on problems involving water quality and agriculture and drainage.

The Planning, Program Development, and Coordination Unit is responsible through the Chief Engineer to the Executive Director for recommendations on programs needed to carry out the statutory functions of the Board, and to meet the needs of the State for competent and prudent water resource investigation, planning, and development.

The Reports Review Unit is responsible for the technical accuracy and presentation of published material released by the Board. This extremely complex and demanding function has been assigned to technical specialists under the direction of the Planning, Program Development, and Coordination Unit to provide a high level of competency to the report review function of the Board.

Support functions for the entire staff of the Board are conducted by the Staff and Office Services Division responsible directly to the Executive Director. Through this division, the finance, accounting, personnel, library, files, mail, purchasing, inventory analysis, and report distribution functions are directed.

Within 10 months after the realignment of the Texas Water Development Board and the Texas Water Commission, the Board prepared a preliminary Texas Water Plan, designed to obtain maximum benefits from the State's water resources. During the ensuing 12 months, the Board has reviewed the preliminary Texas Water Plan, making refinements and adjustments.

The Texas Water Plan is being designed to serve to the year 2020 when Texas is expected to have a population of 30.5 million.

TECHNICAL FUNCTIONS

Responsibility for the technical functions of the Board have been assigned to the following divisions:

Planning Hydrology and Special Studies, Project Planning and Review, Economics and Water Requirements, Ground Water, and Basic Hydrologic Data. Technical support functions are the responsibility of the Reports Review Unit, Electronic Data Processing Division, and Reports Division.

Each division is administered by a director under the general direction and coordination of the Planning, Program Development, and Coordination Unit.

REPORTS REVIEW

The Reports Review section has the responsibility for technical review and editing of manuscripts submitted for publication as reports of the Water Development Board. This section has the responsibility of writing, compiling, and processing for publication the Board's monthly newsletter, Texas Water Conditions.

During the past 18 months, the unit reviewed and edited more than 50 Water Development Board technical reports and one circular, prepared 18 monthly newsletters, and reviewed, edited and assisted in writing 23 river basin summary reports used in the presentation of the Preliminary Texas Water Plan at public hearing and meetings.

PLANNING HYDROLOGY AND SPECIAL STUDIES DIVISION

The Planning Hydrology and Special Studies Division was organized for the purpose of consolidating within one division several functions formerly carried out by sections within various divisions of the Agency.

The Division consists of four sections:

(1) Surface Water Hydrology; (2) Special Studies; (3) Water Quality; (4) Agriculture.

To form these sections, 16 professional, administrative and technical employees were initially assembled primarily from within the Agency.

The purpose of assembling these especially selected professional and technical employees was to make flexible a system for utilization of the varied talents they represent. Additional staff has been added and will be required. The disciplines of Civil Engineering, Geology, Meteorology, Hydrology, and Agronomy were combined to perform the following functions:

1. To continue and to refine hydrologic sutdies for planning purposes.

   a. perform reservoir site and capacity evaluations for the selection of additional reservoirs and the re-evaluation of proposed sites and reservoirs

b. perform ground and surface water quality evaluations required for water quality management programs

c. conduct special studies and investigations of climatic conditions affecting availability and quality of the State's ground and surface water

d. study water problems related to agricultural water use and development and management to achieve practical goals for water conservation and efficient use; conduct studies and make reports on irrigation project developments to include water distribution and delivery systems, consumptive use, and farm water budgets.

2. Evaluate proposed alternatives of water development projects and operation, and assist in establishing criteria for operation of interbasin transfer systems.

3. Evaluate the affects of waste discharge and reservoir impoundment of water on water quality and maintain liaison with local, State, and Federal agencies on water-quality monitoring programs.

4. Conduct climatic studies which include consideration of factors such as drought, floods, evaporation rates, and weather modification.

5. Conduct special studies on salinity alleviation problems in the upper reaches of several of the river basins, including the Red, Brazos, Colorado, and Rio Grande basins and on phreatophyte-control measures wherever this is a major problem within the State.

6. Conduct agricultural studies directed toward achieving maximum efficient use of water, including phreatophyte control, drainage, irrigation systems and practices.

PROJECT PLANNING AND REVIEW DIVISION

This division has undergone several name changes and changes in responsibility during the transition from the Texas Water Commission to the Texas

Water Development Board. The division presently includes the following sections:

(1) Structures; (2) Foundations; (3) Flood Control, Hurricane and Navigation.

Together these sections carry out the following assignments:

1. Study site locations and make field investigations for the Texas Water Plan

2. Perform flood routing and make cost estimates for reservoirs in the Texas Water Plan

3. Review reports of Federal Agencies and Consulting Engineers pertaining to the Water Plan

4. Review applications for permit drawings for Texas Water Rights Commission (formerly Texas Water Commission)

5. Review preliminary construction plans and specifications for Water Rights Commission

6. Make feasibility studies and cost comparisons of applications for loans from the Water Development Fund (administered by Water Development Board)

7. Review construction drawings and specifications for projects approved for Water Development Fund loans

8. Prepare applications for permit drawings for nine reservoirs to be incorporated in the State plan

9. Make field inspections of existing reservoirs for Water Rights Commission

10. Make field inspections of projects under construction for Water Rights Commission

11. Make field inspections of projects under construction after being financed by Water Development Fund loans

12. Make abstracts of reports by Federal agencies

13. Compile geological reviews of the reservoirs proposed for the Texas Water Plan

14. Flood plains delineation work

15. Correlate upstream watershed flood prevention program

16. Correlate navigation program with Federal agencies

17. Carry on Federal agency liaison program

18. Represent State of Texas on United States Committee on Large Dams

19. Make studies on Seismic activities in Texas

20. Conduct coordinating conferences with various consulting engineering firms with regards to construction plans

GROUND WATER DIVISION

The technical functions of the Texas Water Development Board relating to the investigation, conservation, and protection of ground water in the State are performed by the Ground Water Division, with close coordination of these studies with planning requirements and the Board's Legal section.

Work of the Division includes administration and negotiation of cooperative programs of ground water investigation and research with State, local and Federal agencies; field investigation of ground-water resources in areas of specialized needs or problems; initiation of needed research programs with public and private groups; delineation of underground water reservoirs in response to local petition; operation of a permit system for subsurface disposal of municipal and industrial wastes and approval of the subsurface disposal of oil field brines; providing recommendations for the protection of fresh ground water to the oil and gas industry and the Railroad Commission of Texas; and conduct investigations of conditions causing or threatening to cause deterioration in quality of ground water in the State.

## BASIC HYDROLOGIC DATA

Rational planning for the development of water resources is contingent upon the ready accessibility of valid hydrologic, geologic, economic and water use information. These data must be collected over a continuous period of record in order to support comparative analyses of surface and ground water conditions through periods of drought, as well as periods of excessive rainfall.

The Texas Water Development Board has assigned to the Basic Hydrologic Data Division the responsibility for collection of all forms of basic information related to water resources planning and development. The Division is responsible for the collection of accurate data on the entire complex of hydrologic information used by the Board and by others who find this resource an aid to their own water development programs.

Collection of basic information is only a part of the Division's responsibilities. Necessarily related is the use of these data through computation, compilation, analysis, and publication by the Board staff and personnel of the U.S. Geological Survey.

## ELECTRONIC DATA PROCESSING

The Electronic Data Processing Division machine processes the extensive basic data records of the Board. All records, including rainfall, stream discharge, evaporation, water use, water well level information and other diversified data, have been stored for handling by electronic processes. Since the equipment is adaptable to both alphabetic and numeric information, many reports are prepared by computer and made ready for publication without additional typing or typesetting.

The division was set up by an engineer familiar with the many types of engineering problems that can be solved by computer processes.

The tabulations section is responsible for putting all unit records on punch cards and for compiling many printed reports from these cards. A computation section writes the computer programs (or machine instructions) which cause the equipment to handle data in the desired manner. Statistical analyses are done by a third group--the statistical section. Many routine details of data handling for this section are performed by the computer after information has been obtained by field inventories or compiled from published information.

REPORTS DIVISION

The Board publishes through its Reports Division reports concerning availability and development of both surface and ground water in Texas. These reports, containing the results of technical investigations, are widely distributed to local, State, and Federal agencies; industrial and agricultural interests, and to the general public.

To mention a single example of the scope and quality of reports produced by the division, Report 21, "Water Level Data from Observation Wells in the Southern High Plains of Texas," shows water levels for the entire period of record for 29 counties in the Southern High Plains. It contains 542 pages and is comprehensive enough to assist individuals in the Southern High Plains in determining water-depletion allowances for income tax purposes, as well as showing significant regional changes in water availability.

ECONOMICS AND WATER REQUIREMENTS DIVISION

The Economics Division of the Texas Water Commission was established nearly three years ago to examine the economic factors relating to water resource development in Texas. During the realignment of the Water Commission and the Water Development Board, the Economics Division became an important arm of the Board and its water development and planning functions.

One of the first major tasks of the Division was coordinating the methodology used in population projections for Texas with the Water Requirements Division (now a part of the Economics Division) and the Bureau of Business Research at the University of Texas.

The first independent studies of the Division concerned water-oriented recreation and the value of water to the agricultural economy of Texas.

The Division works closely with other State agencies. An example of this is the recently published market survey of Texas' 32 trading areas. The Division, working closely with the Texas Industrial Commission, compiled data of value in efforts to attract industry to the State. The volume was distributed nationally by the Industrial Commission.

The Division is engaged in numerous special studies, all designed to assist the Water Development Board in its planning programs.